No. 775

Office Supreme Court, U.S.
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JOHN F. DAVIS, Clerk

United States Court of Appeals
For the First Circuit

No. 5289.

ROBERT D. QUIRK,

DEFENDANT, APPELLANT,

v.

UNITED STATES OF AMERICA,

APPELLEE;

No. 5290.

SAME v. SAME;

No. 5291.

SAMUEL GOLDSTEIN,

DEFENDANT, APPELLANT,

v.

UNITED STATES OF AMERICA,

APPELLEE;

No. 5292.

SAME v. SAME.

CONSOLIDATED RECORD APPENDIX TO BRIEFS FOR THE APPELLANTS

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Criminal Docket No. 55-154-S

THE UNITED STATES

v.

ROBERT D. QUIRK, GERALD QUIRK,
SAMUEL GOLDSTEIN, also known as SAMUEL GOLD,
IRVING H. YARIN, and FRANK BETTENCOURT.

Violation: Conspiracy to violate Alcohol Tax Laws; in violation of 18 U.S.C. 371

RELEVANT DOCKET ENTRIES.

No. 55-154-S [U.S.C.A. Nos. 5289 & 5291]

1955

June 16 Indictment returned.

20 ALDRICH, *D. J.* Defendant *Robert D. Quirk arraigned and pleaded not guilty;* . . .

20 ALDRICH, *D. J.* Defendant *Gerald Quirk arraigned and pleaded not guilty;* . . .

20 ALDRICH, *D. J.* Defendant Samuel Goldstein, a/k/a Samuel Gold, arraigned and pleaded *not guilty;* . . .

20 ALDRICH, *D. J.* Defendant Frank Bettencourt arraigned and pleaded *not guilty;* . . .

July 12 FORD, *D. J. Defendant Irving H. Yarin arraigned and pleaded not guilty;* . . .

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June 11 SWEENEY, *Ch. J.* Defendants set to the bar to be tried with cases 55-155-S; 55-156-S; 55-157-S; 55-158-S; 55-159-S Crim. and Nos. 56-55 and 56-56-S Crim.; jury trial begins; jury impanelled; evidence; C. Frederick Coolidge, foreman; oral motion for view denied; Defendant Chacon's motion for separate trial denied; continued to June 12th.

12 SWEENEY, *Ch. J.* Trial continues; evidence; continued to June 13th.

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13 SWEENEY, *Ch. J.* Trial continues; evidence; jury returns verdict of not guilty by direction of the Court against defendants Yarin and Bettencourt; defendant Chacon retracts plea of not guilty and pleads guilty on both indictments, two years probation on each indictment, probationary periods to run concurrently; motion of Robert D. Quirk for judgment of acquittal for him; taken under advisement; motion of Gerald Quirk for judgment of acquittal for him; taken under advisement; motion of Samuel Goldstein for judgment of acquittal for him; taken under advisement; motion of defendant Frank Bettencourt for judgment of acquittal as to him filed and allowed and motion of defendant Irving H. Yarin for judgment of acquittal as to him filed and allowed; continued to June 17th.

17 SWEENEY, *Ch. J.* Trial continues as to defendants Robert D. Quirk, Gerald Quirk, Samuel Goldstein, a/k/a Samuel Gold, indictments Nos. 55-154-S; 55-155-S; 55-156-S; and 55-157-S Crim.; evidence; continued to June 19th.

19 SWEENEY, *Ch. J.* Jury trial continues with cases 55-155-S, 55-156-S, and 55-157-S Crim.; jury returns verdict of not guilty as to defendant Gerald Quirk on No. 55-154 and 55-156-S Crim. by direction of the Court at the conclusion of all evidence; requests for instructions to the jury by defendant Samuel Goldstein; charge, committed to jury; jury returns verdict of guilty on all counts as to defendants Robert Quirk and Samuel Goldstein.

22 SWEENEY, *Ch. J.* Judgment of acquittal as to defendant Irving H. Yarin. Judgment filed and copies mailed to counsel June 24, 1957.

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22 SWEENEY, *Ch. J.* Judgment of acquittal as to defendant Frank Bettencourt. Judgment filed and copies mailed to counsel June 24, 1957.

22 SWEENEY, *Ch. J.* Judgment of acquittal as to defendant Gerald Quirk. Judgment filed and copies mailed to counsel June 24, 1957.

24 Motion of defendant Samuel Goldstein for judgment of acquittal or new trial, filed.

July 1 SWEENEY, *Ch. J. Defendant Robert D. Quirk* sentenced to be imprisoned for a period of two years; execution of sentence suspended and defendant placed on probation for a period of three years; probationary period to run concurrently with that imposed in No. 55-155-S Crim. Bail continued.

1 SWEENEY, *Ch. J. Defendant Samuel Goldstein, also known as Samuel Gold,* sentenced to be imprisoned for a period of eight (8) months; said prison sentence to run concurrently with prison sentence imposed in No. 55-157-S Crim. Bail continued.

1 SWEENEY, *Ch. J.* Motion of Defendant Samuel Goldstein for judgment of *acquittal denied.*

1 SWEENEY, *Ch. J.* Motion of Defendant Samuel Goldstein for judgment of *acquittal* or new trial, *denied.*

1 SWEENEY, *Ch. J.* Motion of Defendant Robert D. Quirk for judgment of *acquittal denied.*

2 Notice of Appeal filed by the defendant Samuel Goldstein, also known as Samuel Gold. Copy of the n/a sent to the U. S. Attorney.

2 Notice of Appeal filed by the defendant, Robert D. Quirk. Copy of the n/a sent to the U. S. Attorney.

INDICTMENT.

No. 55-154-S [U.S.C.A. Nos. 5289 & 5291]

The grand jury charges:

ROBERT D. QUIRK of Sudbury,
GERALD QUIRK of Sudbury,
SAMUEL GOLDSTEIN, also known as
SAMUEL GOLD, of Medford,
IRVING H. YARIN, of Arlington, and
FRANK BETTINCOURT of Peabody,

in the District of Massachusetts, hereinafter called the defendants, and other persons whose true and correct names and identities are unknown to your Grand Jury, from on or about the first day of August, 1953, up to and including the date of the return of this indictment, at Boston, Maynard, Waltham, Medford, Watertown, Sudbury, Peabody, and Salem, in the District of Massachusetts and within the jurisdiction of this Court and at other places, the exact locations of which are unknown to your Grand Jury did willfully, knowingly, and unlawfully conspire, combine, confederate, and agree together and with one another to commit certain offenses against the United States, that is to say, the offenses denounced by the provisions of 26 U.S.C. 2803, 2806, 2810, 2833, 2834, 3116, and 3720, in that it was the purpose, the plan, and the object of said conspiracy, and the defendants, and each of them, willfully, knowingly, and unlawfully, at Sudbury in said District, to have in their possession and custody and under their control a certain still set up which the defendants would fail to register as provided by law; for which said still set up the defendants would fail to give the bond required by law; which said still was then and there designed and intended on the part of the defendants for the unlawful distillation and production of distilled spirits; that the said defendants would make and ferment mash for the purpose of distillation and the production of distilled

spirits; that the said defendants would produce such distilled spirits with intent to defraud the United States of the taxes imposed on spirits so distilled with a design to avoid payment of said taxes; that the said defendants would unlawfully possess tax-unpaid distilled spirits; which distilled spirits when produced and placed in containers would not have affixed thereto stamps denoting the quantity of the distilled spirits contained therein and evidencing payment of all internal revenue taxes imposed on such spirits; all in violation of 18 U.S.C. 371.

OVERT ACTS

1. In pursuance of said conspiracy and to effect the purposes and objects thereof, defendant SAMUEL GOLDSTEIN, also known as SAMUEL GOLD, between the months of September and December 1953, at South Boston, ordered the construction of a specially designed boiler and eleven (11) specially designed open-top tanks.

2. In pursuance of said conspiracy and to effect the purposes and objects thereof, defendant IRVING H. YARIN, on or about October 13, 1953, at Medford, purchased certain materials used in the setting up and installation of an oil burner.

3. In pursuance of said conspiracy and to effect the purposes and objects thereof, defendant IRVING H. YARIN, on or about October 14, 1953, at Medford, sold one Model F. Red Wing oil burner.

4. In pursuance of said conspiracy and to effect the purposes and objects thereof, defendant IRVING H. YARIN, during the months of December 1953 and January 1954, at Medford, sold one Model H. Red Wing oil burner.

5. In pursuance of said conspiracy and to effect the purposes and objects thereof, defendant ROBERT D. QUIRK, on or about September 30, 1953, at Waltham, purchased thirty (30) pounds of refractory cement.

6. In pursuance of said conspiracy and to effect the purposes and objects thereof, defendant ROBERT D. QUIRK, from on or about October 1, 1953, to February 23, 1954, at Maynard, Waltham, and Watertown, purchased materials, equipment, and supplies of various types and nature which were made part of a building, more particularly described as a "barn-type structure" located on premises on Mossman Road, Sudbury, Massachusetts.

7. In pursuance of said conspiracy and to effect the purposes and object thereof, defendant GERALD QUIRK, on or about October 26, 1953, received delivery at Mossman Road, Sudbury, of pipe and piping of a type and nature which were found installed in and connected with a still located in a "barn-type structure" on the premises occupied by ROBERT D. QUIRK on Mossman Road, Sudbury.

8. In pursuance of said conspiracy and to effect the purposes and objects thereof, defendant GERALD QUIRK, during October 1953, accompanied defendant ROBERT D. QUIRK for the purpose of purchasing certain electrical equipment from the Watertown Electric Supply Co. at Watertown.

9. In pursuance of said conspiracy and to effect the purposes and objects thereof, defendant GERALD QUIRK, during October 1953, at Watertown, assisted defendant ROBERT D. QUIRK in the purchase of certain electrical equipment from the Watertown Electric Supply Co., which equipment was transported by defendant GERALD QUIRK to Mossman Road, Sudbury.

10. In pursuance of said conspiracy and to effect the purposes and objects thereof, defendant GERALD QUIRK, during October 1953, accompanied defendant ROBERT D. QUIRK to the Watertown Electric Supply Co. at Watertown, and transported certain electrical equipment which was installed in a "barn-type structure" located on the

premises occupied by ROBERT D. QUIRK on Mossman Road, Sudbury.

11. In pursuance of said conspiracy and to effect the purposes and objects thereof, defendant FRANK BETTINCOURT, on or about February 19, 1954, purchased at Salem five (5) pails of sulphonated castor oil.

A True Bill.

(s) ALFRED A. JOHNSON
Foreman of the Grand Jury.

(s) WILLIAM J. KOEN
Assistant United States Attorney.

STENOGRAPHIC RECORD OF TRIAL

Court Room No. 1
Federal Building, Boston
Tuesday, June 11, 1957

[2] The Clerk: Criminal No. 56-55, 56-56, United States versus Frank Chacon.

[Mr. Kittredge and Mr. Lewald confer with the Court at the bench.]

The Court: I will impanel the jury and hear you.

Mr. Kittredge: Fine.

The Clerk: Criminal No. 55-154, 55-155, 55-156, 55-157, 55-158, 55-159, 56-55, and 56-56, United States versus Robert D. Quirk, Gerald Quirk, Samuel Goldstein, Irving Yarin, Frank Bettencourt, Frank Chacon.

The Court: Those will be your seats, your regular seats, during the progress of the trial, so take those seats whenever you are in the court room.

The Clerk: Stand up, please. You are now set at the bar to be tried, and these good jurors, whom I shall call, shall pass between the United States and you upon your trial. If you would object to any of them you must do so

as they are called and before they are sworn. You may be seated.

[Jury impaneled.]

[Jury leave the court room at 10:15 a.m.]

The Court: I will hear that Chacon motion now.

[Mr. Kittredge and Mr. Lewald confer with the Court at the bench.]

The Court: All right. The motion for severance has been denied.

[Mr. Lewald, Mr. Kittredge, Mr. Toltz, Mr. Smith, Mr. Thompson and Mr. Michelson confer with the Court at the bench.]

[3] [Jury return to court room at 10:35 a.m.]

The Court: I suggest that counsel might identify themselves to the jury.

Mr. Kittredge: I am William J. Kittredge, defending Mr. Frank Chacon.

The Court: Have him stand up, please.

Mr. Kittredge: Frank, stand up, please.

[The defendant Chacon stands.]

The Court: All right.

Mr. Toltz: My name is Harry H. Toltz, and I represent the two Quirk brothers, Robert and Gerald. Stand up, please.

[The defendants Robert D. Quirk and Gerald Quirk stand.]

Mr. Smith: My name is Paul T. Smith and I represent Samuel Goldstein. Stand up, please.

[The defendant Goldstein stands.]

Mr. Michelson: My name is Morris Michelson, and I represent Irving Yarin. Stand up, please.

[The defendant Yarin stands.]

Mr. Thompson: My name is Hubert Thompson, and I represent Mr. Bettencourt. Stand up, please.

[The defendant Bettencourt stands.]

The Court: All right. In this court we do not bother to read the indictments unless somebody particularly asks for it. I haven't heard anybody ask for it yet. I will tell [4] you generally what we are trying here. We are trying one case in which all of these defendants, except Chacon, are charged with entering into a conspiracy to violate the Alcohol Tax Laws. That is one separate charge to which all defendants, except Mr. Chacon, are joined together as defendants.

Then each defendant, including Mr. Chacon, that is, Mr. Robert Quirk, Mr. Gerald Quirk, Mr. Samuel Goldstein, also known as Samuel Gold, Mr. Irving Yarin, Mr. Frank Bettencourt and Mr. Frank Chacon, is charged with the violation of Alcohol Tax Laws. All of these cases are being tried together.

At the proper time, and before you retire, the Court will give you instructions as to how your verdicts will be returned. You may proceed now.

Opening Statement to the Jury
by George Lewald, Esq.

May it please the Court, Mr. Foreman, Members of the Jury. In view of the Court's telling you what this case is about, I intend to make this opening extremely brief, and merely say that it involves a still that was set up and operated in Sudbury, Massachusetts, from September of 1953, until it was shut down in February of 1954.

The defendant Robert Quirk is charged, as the Court said, with violating the Alcohol Tax Laws, by setting this still up and operating it, and the other defendants are charged with [5] aiding and abetting him, and with the additional charge for Mr. Chacon of making certain sales of alcoholic beverages without stamps and licenses, et cetera, in violation of law. All of these defendants, as the

Court has told you, except Chacon, are charged with conspiracy to violate the Alcohol Tax Laws.

Mr. Nicholson.

The Clerk: All of the government's witnesses.

Mr. Lewald: Some are downstairs. All of the government's witnesses, please stand and be sworn.

The Clerk: All raise your right hands, please. You do severally solemnly swear that the evidence you shall give the Court and jury in the cause now in hearing between the United States and the defendants at the bar shall be the truth, the whole truth and nothing but the truth, so help you God. Mr. Nicholson, you may take the stand. May I have your names, please, before you go back to your seats?

The Court: I understand from defendant's counsel this case is apt to take about ten days to try, so we are going to try it with all the alacrity and dispatch at our command. That includes sitting next Monday, which is a holiday in a very small section of the states, but not with

[6] THOMAS I. NICHOLSON, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Thomas I. Nicholson.

Q. Your address? A. 985 Walnut Street, Newton Highlands, Massachusetts.

Mr. Toltz: I can't hear.

Q. Your occupation, sir?

Mr. Toltz: Wait a minute. I can't hear.

Q. Your occupation, Mr. Nicholson? A. Enforcement Aide, Alcohol and Tobacco Tax Division, Internal Revenue Service, Boston.

Q. How long have you been with the Alcohol and Tobacco Tax Division of the Internal Revenue Service?

A. About 23 years.

Q. How long have you had your present position, sir? A. Two years.

Q. What are the functions of that Bureau. What is its assignment in the governmental structure? A. Enforce the Internal Revenue laws relating to alcoholic liquors, distilleries, the Federal Alcohol Administration Act, the National Firearms Act and the Federal Firearms Act.

Q. In conjunction with that or with those duties and through the course of your employment have you had some experience in [7] detecting and observing a still? A. Yes, sir.

Q. For the manufacture of alcohol? A. Yes, sir.

Q. Would you have any idea as to how many stills you have come across in the course of your official duties? A. No, but easily 50.

Q. That would be all types of stills? A. All types of stills.

Q. In February of 1954, in the course of your assignment, in the course of your duties did you have cause to go to a place called the Quirk Farm on Mossman Road, Sudbury? A. Yes

Q. What date did you go there, sir? A. February 24, 1954.

Q. When you got there who was present? A. Investigator Cataldo—

Q. There were certain government men? A. Certain government investigators, yes, sir.

Q. Did they originally go there at your direction, sir?

A. No, sir.

Q. At the direction of your superior? A. Yes, sir.

Q. Did you also receive that direction? A. Yes, sir.

[8] Q. And a still was seized on the property, was it not?

Mr. Toltz: I object.

The Court: Let him testify as to what he found there. The jury will disregard that.

Q. Were the government investigators in possession, or did they have custody of anything when you arrived at the farm? A. Yes, sir.

Q. What did they have custody of or what were they guarding? A. A distillery.

Q. Did you take certain photographs there? A. Yes, sir.

Q. I show you this series of photographs and ask you if those are the pictures that you took on that day? A. Yes, sir.

Q. I show you the picture No. 1 and would you tell us what that represents and whether or not it is a fair representation of the view your camera took on that particular day of what actually was there? A. It is a fair representation.

Q. What is it? A. That is a picture of part of the Quirk Farm, the outbuildings there, and the building that housed this distillery, cowshed.

Q. Would you show the Court and jury that in the picture? A. The building on the right there.

[9] Mr. Toltz: I object. I think we should see the picture before it is offered.

The Court: Offer it first.

Mr. Toltz: He said to show it to the jury.

Mr. Lewald: I offer the picture No. 1.

Mr. Toltz: No.

The Court: Show it to the counsel first. Show them all to counsel.

[Mr. Lewald hands photograph to defendants' counsel.]

Mr. Lewald: I have other pictures I intend to present through another witness. May I excuse this witness and put on the second witness to get all the pictures in at the same time?

The Court: Is that the only thing he has?

Mr. Lewald: He is going to testify as to the pictures.

The Court: Counsel for the defendants: The government is suspending with this witness now in order to—

Mr. Lewald: I have other pictures to put in through another witness.

Mr. Toltz: Why don't you do that?

Mr. Lewald: Mr. Crowley.

[10] WALTER R. CROWLEY, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Walter D. Crowley.

Q. Your address, sir? A. I live at 54 Townsend Road, Belmont.

Q. Your employment? A. I am a special investigator, Alcohol and Tobacco Tax Division, Treasury Department.

Mr. Smith: I can't hear. Would you repeat that?

The Witness: I am a special investigator in the Alcohol and Tobacco Tax Division of the Treasury Department.

Q. Sometime in February of 1954 did you have occasion to go to a farm in Sudbury known as the Quirk Farm or approach the farm? A. Yes, sir.

Q. What were the circumstances of how you approached the farm? A. I went there on the 24th of February for the purpose of examining the farm and the buildings to determine what raw materials might have been used.

Q. In relation to the picture only, sir? A. These pictures were taken on the 26th of February.

Q. Where were they taken from? A. From the air in a Coast Guard helicopter.

[11] Q. You were present on board the plane when they were taken? A. Yes, sir.

Q. How many pictures do you have with you? A. Four.

Q. Are they fair representations of conditions as they

existed on that day from the air looking down? A. Yes, sir.

Mr. Thompson: He was up in the air at the time they were taken?

Mr. Lewald: Yes, sir.

[Photograph handed to defendants' counsel by Mr. Lewald.]

Mr. Toltz: I understand these pictures are offered for the purpose of showing the entire farm of the Quirks, or is it to show where you allege some illegal act was being committed?

The Court: Don't the photographs speak for themselves as to what they show?

Mr. Toltz: No, your Honor. That is why I asked that, sir. I would like it clarified. If this is a picture of where the illegal act was committed, we have no objections. If it is just a view, we may object.

Mr. Lewald: They are offered to show the jury the layout of the particular farm, one of the buildings, which contained a still, which is the subject of our trial here.

[12] The Court: All right.

Mr. Toltz: Do you have that picture of where you say the alleged still was in that picture or in any picture?

The Court: You are going to have the opportunity to cross-examine the witness.

Mr. Toltz: All right.

Mr. Smith: No objection.

Mr. Toltz: No objection.

The Court: They may be offered.

Mr. Lewald: I offer these pictures.

The Clerk: Government's Exhibits 1, 2, 3, and 4.

[Photographs marked Government's Exhibits 1 through 4.]

Q. I show you Government's Exhibit 1 and ask you what view that is of the premises? A. That picture is of

an artificial pond or lake on the farm on Mossman Road, Sudbury.

Q. That is, that picture points out the farm, sir. Can you see the farm in that picture? A. Not all of it, no.

Q. Where is it, sir, in relation to the picture to the pond of the farm? A. Up this way from the picture, at the top of the picture.

[Mr. Lewald hands Government's Exhibit 1 to the Foreman.]

Q. Showing you Government's Exhibit 2, what is contained in [13] that picture? A. This is a general view of the outbuildings on the farm. It doesn't show the dwelling house on the farm.

Q. Would you begin from the left and go to the right and describe the building that are depicted? A. There is a small building in the upper left-hand corner, which I would believe to be a cornerib.

Mr. Smith: A what?

The Witness: A cornerib.

A. [continuing] The next building is a cow barn or cattle barn. And then in the upper right-hand part of the picture is the building in which I found raw materials, which I was seeking.

Q. Did you find anything else in the building? A. Yes, I saw a still in the building.

Mr. Toltz: I object to the word "still," if your Honor please.

The Court: What is your objection?

Mr. Toltz: That covers a multitude of sins. He should tell what he saw in there.

The Court: I didn't know stills had models. Tell us what you saw, and describe it.

The Witness: I saw some fermenting vats, mash vats. I saw an upright steam boiler. I saw a long horizontal tank, which I know to be a cooker. I saw extending from

that a column, and the equipment necessary to operate it.

[14] Mr. Toltz: I object.

The Court: That may be stricken. Give us the rest of the paraphernalia you saw there.

The Witness: That's about all I saw there.

Q. Now showing you Exhibit 3, would you start from left to right and tell his Honor and the members of the Jury what was depicted in that picture? A. This picture shows the roadway going by the farm.

Q. And the name of the road is what? A. Mossman Road.

Q. Then going to the right? A. Going to the right.

Q. Several outbuildings, which are what? A. Barns. Opposite one of the barns was a house, which was a dwelling house. Then in the center of the picture is a cow barn. In the foreground is the building in which I saw this machinery designed to manufacture—

Mr. Smith: I object.

The Court: Never mind the "designed." Tell us what you saw.

A. [continuing] —in which I saw the distillery equipment,—

Mr. Toltz: I object to that.

The Court: I will allow that.

A. [continuing] —as heretofore explained.

Q. Then going off to the right of the picture? [15] A. Then going off to the right of the picture is an abandoned foundation of some sort.

Q. Showing you Government's Exhibit 4, would you repeat the same procedure, go through this and identify the buildings from that angle and that view, starting from the extreme left and going to the right? A. From the extreme left, at the very left of the picture is an entrance to a sort of cellarway that was underneath the building

which I searched. Next to it in the middle of the picture is the cow barn and another barn, several sheds, and then at the right center of the picture is the dwelling on the Quirk farm. Mossman Road runs along through the center of the photograph.

[Mr. Lewald hands photographs to the Foreman.]

Mr. Lewald: I would like to suspend with this witness on these pictures for the time being.

The Court: Any cross-examination on the pictures alone?

Cross-examination by Mr. Smith

X-Q. In Government's Exhibit 1, there is a building over in the right-hand center of the photograph, is that correct? A. Yes, sir.

X-Q. What do you say that is? A. That is the end, one end of the building in which the equipment was contained. [16] X-Q. There is no question in your mind about that now? A. Yes, there is.

X-Q. Well, what is the question that is in your mind? Are you in doubt about it? A. I am in some doubt about it, yes, sir.

X-Q. What is your best memory now? A. My best memory is that that picture shows a body of water, which is north of the distillery building, the building in which the equipment was found.

X-Q. Do you say this now, confining your answer to this building for a moment or the portion of the building shown, do you say that is the building that you saw some equipment in that you describe here? A. I didn't say that, sir.

X-Q. Do you now say it? A. No, sir.

X-Q. What is it? A. Could I examine the other pictures so I might more intelligently answer you?

X-Q. Sure [handing photograph to the witness].

A. I'm not certain, Mr. Smith, but I believe it might be the cow barn.

X-Q. It might be the cow barn. Do you want to leave it—isn't it fair you can't say with any degree of certainty as to what this building is that appears on Exhibit 1? Isn't that fair? [17] A. That's fair.

X-Q. It might be the cow barn but you are not sure of that either? A. Yes, sir.

X-Q. Well, now with respect to Exhibit 2, do you see a building there on Exhibit 2 where you say you found some equipment? A. Yes, sir.

X-Q. Will you point that out? A. This building right here, sir.

X-Q. That is the building up in the upper right-hand corner of the picture? A. Yes, sir.

X-Q. Of Exhibit 2? A. Yes, sir.

X-Q. In Exhibit 3, do you see the building?

Mr. Lewald: May the jury see which building he is identifying?

Mr. Smith: In Exhibit 2 the witness has identified this building in the upper right-hand corner as being the building where he found some equipment.

X-Q. Exhibit 3, do you find a building where you say you found some equipment? A. Yes, sir.

X-Q. Will you point that out to us? A. This building in the center.

[18] X-Q. That is the building in the center of this picture, is that correct? A. Yes, sir.

Mr. Smith: And the witness now points on Exhibit 3 to this building about in the center of the picture.

X-Q. In Exhibit 4, which is the building you found some equipment in? A. The very extreme left center.

Mr. Smith: The witness now points to this object in the left center as being a portion of the building in which he found some equipment.

X-Q. Of course, Mr. Witness, you didn't get there until, what, three days after the so-called raid? A. These pictures were taken on the 26th of February. I had been there on the 24th.

X-Q. You weren't there on the 23rd, of course? A. No, sir.

X-Q. Did you take any pictures from the ground level? A. No, sir.

Mr. Smith: That's all.

Mr. Lewald: May I suspend with this witness?

Mr. Toltz: Well, may I go on?

Cross-examination by Mr. Toltz

X-Q. Mr. Crowley, have you been back on Mossman Road since the 26th of February, 1954, when you say you took these pictures?

[19] Mr. Lewald: The witness didn't testify to that.

X-Q. Have you been back since that time? A. No, sir.

X-Q. Have you any notes with you that you made at the time that you viewed the different buildings on this property?

Mr. Lewald: I pray your Honor's judgment.

The Court: I will allow the question.

A. No, sir.

X-Q. Your testimony now is from memory? A. Yes, sir.

X-Q. And, of course, you are not sure, are you, which of these buildings in any of these pictures was where you found some instruments?

Mr. Lewald: I object to the question, your Honor.

The Court: He has already testified to that, but I will allow it.

Mr. Lewald: He is arguing, if it please the Court.

The Court: What?

Mr. Lewald: He is arguing.

The Court: No.

A. Yes, I'm sure.

X-Q. You are sure? A. Yes, sir.

X-Q. Can you tell the Court and jury how far is the distance from the pond to where you say you found some instruments?

[20] The Court: Mr. Toltz, do you understand this witness is now here purely for the purpose of identifying the photographs and that he will come back to the stand later?

Mr. Toltz: I didn't understand that. I withdraw any other questions, and that is all.

Mr. Lewald: I have no further questions, Mr. Nicholson.

THOMAS I. NICHOLSON, Resumed

Direct Examination by Mr. Lewald, Continued

Q. Mr. Nicholson, you already have testified that these were the pictures you took, and that they were fair representations of the view. Would you place them in the order in which they were taken as you entered the farm and went through the outbuildings on the farm?

Mr. Smith: For the purpose of saving time, your Honor, we have agreed to all but two of the pictures.

The Court: What is the sense of putting them in a particular order? They will never stay in that order for ten days.

Mr. Lewald: I wanted to have them marked in that order, your Honor.

The Court: Do it as fast as you can.

Mr. Lewald: Do you have one other pictures there at the table?

[21] Mr. Smith: We have some.

Q. Would you count the pictures you have, Mr. Nicholson?

Mr. Toltz: There they are. We are hiding them.

Mr. Smith: We don't object to those.

Mr. Lewald: I offer them.

Mr. Smith: I don't know whether we kept out the two we have objected to.

Mr. Lewald: May they be marked for identification?

The Court: All right. Let one group not objected to be entered as one group, and the others in another group.

Mr. Lewald: There were two only that you objected to?

Mr. Smith: That's right.

The Clerk: Government's Exhibit 5.

The Court: I will see counsel on the objection up here.

[Conference at the bench between Court and counsel, not taken.]

Mr. Lewald: May this picture, marked Exhibit 5, may we call that Exhibit 5-A?

The Court: Surely.

[26 photographs of Quirk Farm marked Government's Exhibits 5-A through 5-Z.]

Q. I show you Government's Exhibit 5-A and ask you what that picture represents? A. This is a picture of the Quirk farm on Mossman Road, taken [22] from a vantage point across the road and looking in a westerly direction toward the cow barn and the other outbuildings.

Q. I show you Government's Exhibit 5-B, and would you tell us what that represents? A. This is a picture of the corncrib and dwelling house at Mossman Road, taken from a point in the road leading to the building, which is where this equipment was found.

Q. Now 5-C, sir.

The Court: Can't you put those in as a group? The jury isn't going to remember this.

A. This is another picture of the building.

Q. I show you 5-F or 5-D, E and F, and ask you what do they collectively represent? A. One of them is a cow barn and the other two are the buildings—

Q. The cow barn is on 5-D? A. Yes. The other two are pictures of the building in which I saw this distillery.

Q. That is 5-E and 5-F? A. Yes, sir.

Q. And 5-G and 5-H? A. A westerly view of the building in which the distillery was, showing the

Mr. Smith: I object to that.

The Court: Call it something else besides a [23] distillery. Call it the alleged contraband.

A. The building that held the alleged contraband, showing the two pipes that fed the oil tanks in the cellar of that building.

Q. 5-I, sir. A. That is a picture taken from the back of the building, showing the pipes that led down to this artifical pond.

Q. Would you point out to the jury where the pipe is that you have just testified to? A. The pipe is in the middle there.

Q. After you took pictures on the outside of the premises, you thereafter entered a particular building on the premises? A. Yes, sir. I entered that building that held the alleged contraband. Picture 5-K is the view of the inside of that building immediately as you enter the door.

Q. From what level, sir? A. From the ground level.

Q. Would you show the Court and jury the picture? A. This [indicating].

Q. And the next picture? A. 5-L, after leaving that room and going to the right, there is another room. I took a picture there, showing the contents of that room.

Q. Do you know what the contents of the building were? A. Yes. 5-gallon cans, some of them empty, and some of them full of alcohol, some of them full of distilled spirits.

some [24] of then wrapped in paper and tied with twine.

Q. And this one? A. Leading to that room there, to the right was another door. As you look in that door, the next picture shows a smokestack, some mash vats, and a hole in the floor which led below.

Q. Did you observe and test what the vat held? You say there were mash vats? A. I saw the contents. They held a liquid, some of which had foam on the top. I didn't sample it. The next picture taken from inside that room shows a copper column.

Q. Would you point those out? A. The copper column [indicating].

Q. On the extreme left? A. On the extreme left. A galvanized iron tank, approximately 5 feet long, 4 feet wide, 5 feet high, holding a liquid. Up on top is a copper apparatus known as a condenser, used for condensing the vapor that rises from the top of that column.

Q. On this picture 5-M, there is a pipe-like structure going from the top of the column that you have identified over to the condenser? A. Yes. This is coming back from the condenser for refluxion into that particular pipe. 5-M is a picture showing the top of that previously mentioned copper column, the condenser and another galvanized iron vat.

Q. Would you point out to the jury the top of the copper [25] column? A. The top of the column, the condenser, and the galvanized iron vat[indicating]. 5-P is a picture of a galvanized iron tank, which held the finished product.

Q. The other things in the picture are what? A. Well, you can see part of the column in back of that, and a ladder leading up above. Cans of that held distilled spirits.

Mr. Smith: Cans for what?

The Witness: That held distilled spirits, Mr. Smith.

A.[continuing] I descended through the trap door previously mentioned to the cellar below.

Q. Excuse me. These pictures you have previously talked about were inside? A. On the street level. I went down a ladder, which is shown on the right of picture 5-R, which also shows an upright steam boiler, and from this steam boiler the first smokestack, through the floor board. This is a close-up of the same steam boiler, showing a gun type oil burner. Picture 5-S.

Mr. Smith: What letter are we up to now?

The Witness: 5-S, Mr. Smith.

Mr. Michelson: I didn't hear the last.

The Witness: A gun type oil burner. Picture 5-T shows the still pot, the copper column previously described as [26] going up through the floor, and a cold water pressure tank with an electric pump.

Q. Would you point that out to the Court and jury? A. The still pot on the bottom, the copper column, the water pressure tank with the pump on the left [indicating].

Q. All right. A. 5-U is a close-up of the still pot, the copper column, and a 5-gallon painted iron pail painted black, that contains a brown oily substance.

Mr. Thompson: That is what number, please?

The Witness: 5-U.

A.[continuing] 5-V shows the end of the still post, a water pressure tank with a pump, two water pressure tanks with two different pumps. 5-W is a water pressure tank with an electric pump and pipes, electric wiring. 5-W. Wait a minute. Let that go, please. 5-X is a picture taken down in the cellar, showing bags of sugar and empty 5-gallon cans. 5-Y is a picture taken in the same room with a close-up showing the sugar bags, empty 5-gallon cans. 5-Z is a picture taken in the same room showing two oil tanks that were fed from the lines I described in one of the outside pictures, and some sugar and chemicals. 5-Q is a picture taken from the first floor of a loft over the kitchen, in which were stored empty 5-gallon cans.

[Mr. Lewald hands photograph to the Jury.]

[27] Q. Did you make any other observations than those that are pictured by these photographs? A. Yes, sir. A. Yes, sir.

Q. What were these observations?

Mr. Smith: I object.

Q. [continuing] On the still premises.

The Court: What date?

Q. On the day you went there, February 24th. A. Yes, sir. I paced the distance from the corner of the building which held the alleged contraband, and that was roughly 300 paces. I paced the pond—

Mr. Smith: Paces to where?

The Witness: From the corner of the building which held the alleged contraband to the pond, previously spoken about, and that was roughly 300 paces. The pond itself was difficult to pace because it was starting to melt that day. But my best recollection of that was 200 paces long and about 75 paces wide. I wouldn't be too accurate on that. The water there was—there was some melting there, and the water that flowed down from the road from this house had an irridescence on it, as you would see oil floating on water.

Q. Now, sir, concerning this equipment you have testified to, that you took pictures of, was that completely set up for the manufacture of alcohol on the day you were there, February 24th?

Mr. Smith: I object.

[28] The Court: He can describe the setup, what he noticed.

Q. Would you describe the setup as it existed? A. The steam boiler was set up and the gun type boiler was set up for operation, the pipes were connected for the steam to go to the pot, the column was affixed to the pot, the column went up through the floor. It was affixed, well,

firmly to the condenser and the lines going from the condenser to the receiving tank were all in place, and the refluxion line going from the condenser went back to the column.

The Court: Was this running?

The Witness: It was not running, sir.

Q. Was this apparatus equipped with a deflamator tube?

Mr. Smith: A what?

A. It had a condenser, Mr. Lewald.

The Witness: Shall I answer your Honor's question?

Q. From the condenser where would the liquid in the apparatus then go? A. It would then go to the receiving tank.

Q. How would it get there? A. Pipe line, an open pipe line.

Q. Into the receiving tank? A. Yes, sir.

The Court: We will take the morning recess here.

[Recess.]

[29] The Court: We are shy one defendant, I believe.

The Clerk: Mr. Thompson is not here and Mr. Michelson is not here.

The Court: I am going to ask that the defendants and counsel be as prompt as possible.

Q. Mr. Nicholson, in your opinion what further thing would need be done to operate this machinery which you observed on this day, February 24th of 1954? A. Snap the switch on the gun type burner to start the heater on the steam boiler. That's all.

Q. And alcohol could be made from this setup? A. Yes.

Mr. Smith: Wait a minute. I object to the question.

The Court: That is a very leading question.

Mr. Lewald: It is an opinion question and he is qualified as an expert.

The Court: Ask him if he knows what would happen if the thing operated.

Q. What would happen if it operated with the setup as you saw it? A. It would make alcohol.

Mr. Lewald: I have no further questions.

Cross-examination by Mr. Toltz

X-Q. Did you tell the Court and Jury of all your observations when you were at this building on Mossman Road? [30] A. All I can recollect now, Mr. Toltz.

X-Q. Did you make any notes of your observations at the time? A. Yes, sir.

X-Q. Do you have those notes here? A. No, sir.

X-Q. Are there notes available? A. Yes, sir.

X-Q. Where are they? A. In my office.

X-Q. Do I understand that you are going back on the stand to testify later on in this case? A. I don't know, sir.

Mr. Toltz: Is he in the same position, Mr. United States Attorney, as Mr. Crowley? Is he going back on the stand?

Mr. Lewald: This is his entire testimony that he has given on direct.

Mr. Toltz: All right.

X-Q. Will you bring those notes to court with you?

Mr. Lewald: I pray your Honor's judgment to this.

The Court: I will allow it.

X-Q. Will you bring those notes to court with you? A. Yes, sir.

X-Q. When was the first time—

Mr. Lewald: May it please the Court, I am somewhat confused. Is this witness now requested by the Court to go [31] back and get his notes?

The Court: No, he is not. Counsel asked him if he would bring his notes. He said that he would.

The Witness: I beg your pardon. I thought I was being ordered to. I will not.

X-Q. You will not bring your notes? A. No, sir.

X-Q. That is your answer? A. Yes, sir.

X-Q. Well, Mr. Witness, when was the first time you were on the premises? A. February 24, 1954 at approximately 11 a.m.

X-Q. Mr. Witness, in your notes that you say you will not bring here, you have the date in there of February 24, 11 a.m.? A. Yes, sir.

X-Q. Was there a Coleman floor type heating furnace on the premises when you were there? A. I don't know, sir.

X-Q. You don't know? A. No, sir.

X-Q. Well, tell me, Mr. Witness, didn't you tell the Court and jury of all your observations on those premises? A. So far as I can recall, yes, sir.

X-Q. Can't you recall as to whether there was such a furnace on those premises? [32] A. There was a steam boiler there. Who made it, I don't know.

X-Q. I didn't ask you that. Was there a heating, floor type heating furnace there? A. A floor type heating furnace? You will have to describe that better for me, Mr. Toltz. I don't know what you mean by that.

X-Q. You don't know what a floor type heating furnace is? A. No, sir.

X-Q. A furnace that opens up from the floor? A. You mean a hot air furnace?

X-Q. Yes. A. I don't recall that, no, sir.

X-Q. Did you see any hanging furnace? A. No.

X-Q. In there? A. No.

X-Q Did you take all the pictures you showed to the jury today? A. Yes, sir.

X-Q. You took them yourself? A. Yes, sir.

X-Q. You remember measuring off the distance between the corner of this house and the pond? You paced it off? A. Yes, sir.

X-Q. Is that in your notes that you won't bring here? [33]A. I don't know, sir.

X-Q. You paced off the width and length of the pond? A. Roughly, yes, sir.

X-Q. Is that in your notes that you won't bring here? A. No, sir.

X-Q. So from memory, you remember the length and the breadth of this pond? A. Generally, sir.

X-Q. You want the Court and jury to understand that when you arrived on the 24th all the entire mechanism was in operation? A. No, sir.

X-Q. In other words, only by the throwing of a switch would the mechanism begin to work? A. Yes, sir.

X-Q. Is that the way you want it understood? A. Yes.

X-Q. Nothing had been taken out? A. On the 24th? Not that I know of.

X-Q. Do you know the date the officer entered and took possession A. Well, the 23rd—I wasn't there.

X-Q. Don't you know? A. Except what I heard in the court room, sir. I was not there.

X-Q. Was there any mash on the premises? A. Yes, sir.

X-Q. Where was the mash? [34] A. In the galvanized iron tanks on the street floor of the building.

X-Q. You're sure of that, sir? A. Yes, sir.

X-Q. Did the mash— A. Some of it was there.

X-Q. Let's have it. What do you mean by "some of it"? A. Some of the tanks contained what I would call mash.

X-Q. How much mash did you see there? A. I don't know.

X-Q. On the 24th? A. I don't know, sir.

X-Q. Well, you have told the Court as an expert that you have been around about fifty stills in your day? A. That's right.

X-Q. You have seen mash before? A. Yes, sir.

X-Q. Can't you tell the Court and jury about how much mash you saw on the premises that day? A. No, sir. I didn't measure it.

X-Q. You didn't think it important? A. Oh, yes. That was not my function.

X-Q. What was your function on the 24th? A. To take pictures.

X-Q. Take pictures? [35] A. Only.

X-Q. And your function was not to measure off distances either? A. No, sir.

X-Q. You did that on your own? A. Yes.

X-Q. You didn't take a look at the mash and keep in your mind about how much mash you saw there? A. No, I didn't.

X-Q. In your notes, Mr. Nicholson, have you the different objects, the different machinery that you saw on the premises on the 24th? A. No, sir.

X-Q. You haven't very much in your notes, have you, Mr. Nicholson? A. Yes I have the description of each one of the pictures taken.

X-Q. A description of the pictures? A. Yes, sir.

X-Q. You have no description of the width of the pond, the length of the pond? A. No, sir.

X-Q. You haven't anything in there about how much mash there was there? A. No, sir.

X-Q. So that your notes contain only the description of the different pictures? [36] A. Yes, sir.

X-Q. You still don't want to bring your notes here to court? A. Yes, sir.

X-Q. Is that right? A. That's right.

Cross-examination by Mr. Smith

X-Q. What is your title? A. Enforcement Aide.

X-Q. Enforcement Agent? A. Enforcement Aide.

X-Q. To whom? A. To the Chief of the Enforcement branch.

X-Q. Does that make you the second in command up here at the ATU? A. No, sir.

X-Q. You are one of the top officials there, is that right? A. I am in charge of the special investigators.

X-Q. You are in charge of all the investigators who go out to do this investigating of whether or not there is any violation of the Internal Revenue Act pertaining to alcohol and tobacco? A. No, sir.

X-Q. Well, you say you only went out and took pictures? A. Yes, sir. I was a special investigator then.

X-Q. You just took pictures? [37] A. Yes, sir.

X-Q. Did you turn a report in to your superior at that time? A. Yes, sir.

X-Q. Where is that report? A. I don't know, sir.

X-Q. Does the report contain information concerning matters to which you testified here this morning? A. All except the pacing of the distance from the corner of the building to the pond and the dimensions of the pond, which I don't claim to be accurate.

X-Q. Well, apart from the distance to the pond, does your report contain information concerning matters to which you testified here on direct examination this morning? A. Yes, sir.

Mr. Smith: If your Honor please, I make demand that the government produce the report submitted by this witness for the purpose of assisting the defendant in cross-examination.

The Court: All right. I will order it, and that it be admitted as evidence, too.

Mr. Smith: May we cross that bridge when I come to it?

The Court: You may offer it in evidence. If you are

going to see it, I shall allow it in at that time. I will save your rights.

Mr. Smith: All I am asking for at this time is the [38] order to produce it for the purpose of examination.

The Court: I said that I would allow it. You need not persuade me.

Mr. Smith: That is all.

The Court: Any further questions? Step down.

Mr. Lewald: Mr. Cataldo.

JOSEPH E. CATALDO, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Joseph E. Cataldo.

Q. Your address? A. 71 Cedar Avenue, Arlington, Massachusetts.

Q. Your occupation? A. Investigator of the Alcohol and Tobacco Tax Division, Internal Revenue.

Q. How long have you been employed with the Internal Revenue Service as an investigator? A. A little over 24 years.

Q. Some time in February in 1954, in the course of your official duties did you go to the Quirk Farm in Sudbury or near it? A. I did.

Q. Will you tell us what day you went there, what you did when you went there? A. On February 19, 1954, I went to the rear of the Quirk Farm [39] on Mossman Road, Sudbury, Massachusetts, about well, between 2:30 and 3:30 p.m. with Investigator Mazaka. At a point at the junction of a pond in the rear there, about 700 feet I would say from the suspected building, a shed type building, I detected an odor of fermenting mash coming from the premises.

Q. Then what did you do, sir? What observation did you make? A. On February 20th.

Q. You made no observations? A. Not on that day.

Q. You went back again, you say? A. On February 20th, between the hours of 4:15 and 7:15 p.m.

Q. Will you tell us what you observed on that day? A. Well, I was at the same point until about 6:15 p.m., with Supervisor Fletcher and Investigator Paige at that point I detected an odor of mash coming from these premises. At 4:45 p.m. I saw three men come from a cow barn, which is in the back, to the right of the shed type building.

Q. Do you see these men in court here? A. I do not.

Q. Were you able to recognize these men? A. I was not.

Q. What other things did you observe? A. I saw two men leave this building, the suspected still building, and return to the cow barn. The other man I did not see.

[40] Q. When was the next time you went to the premises? A. Well, on that same day I approached to a nearer point about 6:15 p.m., and within 300 feet. I went up towards the building.

Q. Would you keep your voice up? A. I approached nearer to the building, to about 300 feet. There the odor was a little stronger than at 700. I left the premises that day at 7:15 p.m.

Q. Did you make any further observations or do any testing on the premises on that day? A. I did not.

Q. On the 20th? A. No.

Q. When was the next time you again went on the premises? A. On February 23rd.

Q. Will you tell us when you went there and what you did when you arrived? A. I executed a federal search warrant on the premises about 4:15 p.m. Accompanied by other officers of the Internal Revenue I went to the lower level where I had seen three men enter, which is a double door, had a padlock on it. As I drove in the yard there

was a strong odor of fermenting mash around the premises. When I entered the building I forced the door, after announcing: "Federal officers with a search warrant." As I entered the lower level I saw a number of [41] 100-pound bags of sugar and empty 5-gallon cans. I went up a ladder to the first floor, on the ground floor. I saw mash coming out of cast iron vats that were on this level and it was going all over the floor and out into the field in the rear. With other officers I searched the premises, and there was nobody there. I then went to the dwelling house on the premises and knocked on the door. There was no answer.

Q. This was a dwelling house, a building other than the one you had been in? A. That's right, a dwelling house on the premises, the Quirk home of the, as I understand it, the mother and father. There was no answer. So I stayed around the premises at the front, and about 5 p.m., Robert Quirk and his brother Gerald came to the premises.

Q. Did you have some conversation with them? A. I did.

Q. Will you tell us what you said to them and what they said to you, if anything? A. Well, I started to talk with Robert first. And Gerald asked me what it was all about. I had no further conversation with Gerald. But Robert, I took him into my automobile.

Q. Did you have some conversation with him as he approached the farm or as he got out of his vehicle? A. He was out of the vehicle then. We talked.

Q. Was there some conversation when he got out of his vehicle? [42] A. Well, he said—I asked him who he was, and he said he was Robert Quirk. I said, "Do you live here?" He said, "No. I live in a little house over here, but I'm half-owner of the premises with my mother Norma." I placed him under arrest then, when he said

he was part-owner of the premises. Then I questioned him. And later on I said to him, "You can probably help yourself if you tell us who was operating the still." And he said that he would like to tell us but he was afraid. He would think it over. And during the conversation he said that he got $75 a month since December for the premises. I said, "How many men operate it?" He said, "Two." I said, "Gee, that's a big still to operate with two men." I said, "It should take four." He said, "No, that's all, two men." He said, "They stayed there all the time." He was later taken to Sudbury Police Station, and he was photographed by Chief McGovern of the Sudbury Police.

Q. Did you have any further conversation with him apart from what you have already testified to after you placed him under arrest? A. I don't recollect any more.

Q. Going back to your entering these premises, I show you Government's Exhibit 5-E. A. That is the front of the still building.

Q. That is the front of the still building? A. That's right.

[43] Q. Does it show on the picture the entrance you entered? A. No.

Q. On Government's Exhibit 3, sir, will you pick out the building you entered? A. This one right here [indicating]

Q. Will you point out to the jury where the entrance to this building was that you went into on this date? A. You can't see it.

Q. What end of the building is it? A. Down this end of the building [indicating on photograph].

Q. When you entered the building what did you observe inside the building and at what level did you enter it? A. I entered it at the lower level and then went up.

Q. That would be the basement of the cellar of the

building? A. That's right. Then I went up a ladder to the first floor.

Q. Would you describe what you saw as soon as you opened the doors? A. I seen a number of 100-pounds of sugar and quite a number of empty 5-gallon cans.

The Court: He has been over this once.

Mr. Lewald: I don't believe he did.

The Court: I do.

A. [continuing] Then I went up to the upper level.

The Court: He saw the mash spilled out over the back yard.

[44] The Witness: And a complete still.

The Court: I didn't dream that. He said it.

Mr. Lewald: I'm sorry.

Q. You saw— A. —a complete—still, copper column, deflorator and condenser. It was hot, and not in operation. Everything was hot. But the electric things were pulled to an off position, the switches.

Mr. Lewald: Your witness. Oh, one further question, if I may.

Q. Did you take any samples on the premises? A. I took a few. I don't remember how many I turned them over to Investigators Daley and Paone.

The Court: Any questions?

Cross-examination by Mr. Thompson

X-Q. Did you execute the search warrant? A. I did.

X-Q. Did you swear to the return on it? A. I did.

X-Q. Did you put in your return everything that you found there in connection with the still or operations? A. I did. I omitted one item.

X-Q. Only one item? A. That's right, that I remember.

[45] X-Q. Where is that item? A. It was the upright steam boiler, destroyed on the premises. I didn't put that in the return.

X-Q. Outside of the steam boiler, you put down everything you found that was being used in connection with the operation of this? A. As far as I know, yes.

X-Q. Everything that you could find? A. That's right.

X-Q. That search warrant, I assume, is here? I have been looking for it. I assume it is among the papers.

Cross-examination by Mr. Toltz

X-Q. Mr. Cataldo, you have been on the force, you say, some 24 years? A. That's right.

X-Q. You know your way around? A. Sometimes.

X-Q. On February 19, you say you went to the property on Mossman Road, is that right? A. That's right.

X-Q. By the way, have you any notes? A. I have.

X-Q. Of everything that went on there? A. I have them.

[46] X-Q. Did you file a report? A. This is part of it.

X-Q. This is part of the report? A. That's right.

X-Q. It is not all of the report? A. It is all of my testimony.

X-Q. Did you file a written report with your superiors? A. I did.

X-Q. Have you that report here? A. No.

X-Q. You have some notes made? A. No, I have not.

X-Q. What have you in your pocket? A. My testimony on my report.

X-Q. Your testimony on your report? A. That's right.

X-Q. Have you any notes you made on the premises on February 19? A. No, sir.

X-Q. Did you make any notes on that day? A. Yes, sir, I did.

X-Q. Where are those notes? A. I don't know.

X-Q. You don't mean that, do you, sir? A. Yes, I do.

X-Q. You don't know? [47] A. That's right.

X-Q. Well, on February 19th you were there between 2:30 and 3:30? A. That's right.

X-Q. Who was with you? A. Investigator Mazaka.

X-Q. Where on the premises were you? A. I told you, about at a point 700 feet from the rear of the still building.

X-Q. How did you enter the premises? A. I entered the premises through a shrine, that is, the next premises on the right going down Mossman Road from the Quirk premises, and went through the woods and around in back.

X-Q. You didn't enter the Quirk premises at that time? A. No, sir.

X-Q. When you were 700 yards, did you say? A. Feet.

X-Q. 700 feet away, were you on the Quirk premises? A. I don't think so.

X-Q. Don't you know? A. I know we were not because there is a fence, a barbed wire fence, seperating the Quirk premises.

X-Q. From whose premises? A. From the other premises, whoever they belong to.

X-Q. Don't you know? [48] A. I didn't check the other premises.

X-Q. Didn't you inquire? A. No, sir.

X-Q. Well, were you standing beyond the pond on that first day? A. I was standing at the junction of the pond and the small brook.

X-Q. At the junction of the pond and the brook? A. That's right.

X-Q. From there you could see this building? A. Very plainly.

X-Q. You are sure of that? A. Absolutely.

X-Q. What part of the building could you see? A. I could see all the back part.

X-Q. What is the back part of the building? What does it consist of? A. Well, it consists of a building, that's all with a few windows in it.

X-Q. How big a building was it that you saw? A. I saw—80 feet long and 20 feet wide.

X-Q. 80 feet long and 20 feet wide? A. Yes.

X-Q. How high? A. Well, with the roof I would say about 16 or 17 feet high from the ground at the rear.

[49] X-Q. Was that the high point of the building that you saw? A. That is the roof.

X-Q. Was it the high point of the building? A. The high point would be from the cellar, where I entered, with the search warrant, to the top of the building, which I couldn't see, the cellar entrance itself.

X-Q. So you could not see the entrance into this building through the cellar? A. That's correct, not on the 23rd.

X-Q. I am talking about the 19th. A. The 19th? Yes.

X-Q. You couldn't see it, could you, the cellar entrance? A. I didn't see it the 19th.

X-Q. Was there any entrance you could see on the 19th? A. No, sir.

X-Q. None whatsoever? A. That's right.

X-Q. What type of day was the 19th of February? A. Kind of cold, the temperature was about 45, I would say.

X-Q. That was the first time you were there? A. That's right.

X-Q. How many windows were on the side that you could see? A. I didn't count them.

X-Q. Well, can't you take a guess? A. No.

[50] X-Q. Haven't you anything of that in your report?

The Court: He doesn't care to make a guess at it.

X-Q. What type of buildings was this? A. I call it a shed type of building.

X-Q. Frame? A. Wooden.

X-Q. What other building could you see from where you were standing? A. I could see the cow barn and I could see the top of the barn. The cow barn was on a

lower level. Then in front of that extended another barn with a large peak on it.

X-Q. What side of this building we are talking about was this cow barn you saw? Was it to the left from where you were standing or to the right? A. The cow barn was on the right from where I was standing.

X-Q. On the right from where you were standing? A. Yes.

X-Q. Are you sure of that? A. Positive.

X-Q. What other building could you see from where you were standing? A. That's the only two buildings I paid attention to.

X-Q. I didn't ask you that. What other buildings could you see from where you were standing? A. I don't remember seeing any other buildings at that time.

[51] X-Q. And you detected a fermenting mash odor? A. That's right.

X-Q. How long did you remain there? A. On the 15th, one hour.

X-Q. Did you make a note of that in your notes? A. I did.

X-Q. You returned again when? A. February 20th.

X-Q. Who was with you? A. Supervisor Fletcher and Investigator Paige.

X-Q. How did you get on to the premises at that time? A. The same way as I approached the first time, through the shrine and around through the woods.

X-Q. As you came from the shrine did you see any other buildings on the Quirk property? A. I saw the house when I came down over the hill.

X-Q. What house? A. The Quirk house.

X-Q. Which one? A. The dwelling.

X-Q. You know there was more than one dwelling on the Quirk property? A. I learned later there was one owned by Robert D. Quirk, yes.

X-Q. Did you see that on the 20th? A. I did not.

[52] X-Q. Could you see it from where you were standing with Fletcher and Paige? A. I don't remember seeing it.

X-Q. Could you see it from where you were standing with Fletcher and Paige? A. I don't remember seeing it.

X-Q. You say you saw two men or three men? A. Three men.

X-Q. Go from the cow barn. And if I understand you rightly, you say it was to the right? A. The cow barn is to the right of the shed like building or still building, as I call it.

X-Q. You saw three men? A. That's right.

X-Q. This was at what time? A. 4:45 p.m.

X-Q. Wasn't it dark at that time there? A. Dusk.

X-Q. Just dusk? A. That's right.

X-Q. Were there any lights on around you? A. Lights in the cow barn.

X-Q. And in this dusk you saw three men 700 feet away go from the cow barn into this building? A. That's right.

[53] X-Q. Do I understand you correctly? A. That's right.

X-Q. How were they dressed, Mr. Cataldo? A. I couldn't detect what they wore.

X-Q. Might they have been women? A. I wouldn't say so.

X-Q. Might they have been women? A. No.

X-Q. What was there about them that makes you say No? A. Because of their form and their shape.

X-Q. Did you see what they wore? A. I couldn't notice. I noticed it was dark clothing. I couldn't detect the color.

X-Q. Did they wear hats? A. I said I saw the forms of men.

X-Q. I say, sir, did they wear hats? A. I wouldn't remember.

X-Q. Did they wear overcoats? A. I don't know.

X-Q. Did they have shoes on? A. I couldn't see.

X-Q. You couldn't see very well, could you, Mr. Cataldo? A. I saw three men.

X-Q. How were they dressed? You don't know? A. That's right.

[54] X-Q. Or what color coats they wore, you don't know. A. Right.

X-Q. Were they young? A. I couldn't say.

X-Q. Were they old? A. I couldn't say.

X-Q. Did any one of them have a mustache or a beard? A. I don't know.

X-Q. Is that in your notes that you have in your pocket? A. About their dress?

X-Q. That you saw three men? A. It is.

X-Q. You have got that in your pocket A. Yes.

X-Q. And made at the time? A. Right after it.

X-Q. When? How long afterwards? A. I don't remember just exactly how long.

X-Q. Well, you can tell us within an hour or two or three, Mr. Cataldo? A. Not necessarily.

X-Q. Will you take your notes out? A. Yes.

X-Q. Those are not notes, Mr. Cataldo? A. I told you I didn't have any notes here.

[55] X-Q. This is a report you made.

The Court: He identified it that way. Let's not waste any more time on that.

X-Q. Mr. Cataldo, where were you standing when you say you were about 300 feet from the suspected building? A. Standing right in back of the barbed wire fence, about 300 feet, I would say, from the rear of the building.

X-Q. In other words, you had walked forward about 400 feet? A. Yes, a little diagonal.

X-Q. And did Fletcher and Paige walk with you? A. No, sir.

X-Q. You did that yourself? A. That's right.

X-Q. You remained there how long? A. I remained on the premises three hours.

X-Q. No. How long were you there? A. Probably 15 or 20 minutes.

X-Q. When did you see the men leave the premises? A. Leave what premises?

X-Q. I think you said that two men left the premises. A. Yes.

X-Q. When did you see them leave? A. About 15 minutes after they went in, which was about 4:45.

X-Q. You never did see the third one leave? A. That's right.

[56] X-Q. You stayed there until 7:15? A. That's right.

X-Q. You did not return again until three days later? A. Yes, sir.

X-Q. You were not there on the 21st? A. No, sir.

X-Q. Or the 22nd? A. No, sir.

X-Q. When did you appear before the Commissioner? A. On the 23rd.

X-Q. For your warrant? A. Yes.

X-Q. When you appeared before the Commissioner, you made a statement? A. Yes, sir.

X-Q. To the Commissioner? A. Yes, sir.

X-Q. That there was a still on the premises? A. I said I smelled fermenting mash.

X-Q. Is that all you told him?

Mr. Lewald: I pray your Honor's judgment to this line of questioning unless it is for some particular purpose.

The Court: The Commissioner issued the warrant. The Commissioner was satisfied, no doubt.

Mr. Toltz: I withdraw it, your Honor.

[57] X-Q. What time did you receive the warrant? A. What time did I receive the warrant? I don't know what the exact time was.

X-Q. Approximately what time? A. Oh, a little after noontime.

X-Q. Then you proceeded to the premises on Mossman Road? A. I arrived on the premises about 4:15 p.m.

X-Q. How long after you had received the warrant did you leave for the premises? A. Oh, probably we left around 2 o'clock or so, 2:30.

X-Q. How many of you were present? A. I can name them.

X-Q. Do that, please. A. There was Assistant Regional Commisioner Henneberry, Chief of Enforcement McCarthy, Supervisor Fletcher, Investigators Newcomb, Judd, Mazaka, Piskadlo, myself, and Watson.

X-Q. You all proceeded to the premises? A. That's right.

X-Q. How did you enter the premises this time? A. Through the front yard.

X-Q. When you went to the front yard what buildings did you see? A. I saw the front part of the barn, the front part of the cow barn, which sets down in the back. I saw Mr. Quirk's father and mother's home on the left, and I ran around in between and down to the back door with Investigator Newcomb.

[58] X-Q. The back door of the— A. —of the still building.

X-Q. What did you do when you got there? A. I knocked on the door and announced, "Federal officers with a federal search warrant." And there was a padlock on the door. Nobody answered. So we forced the padlock open and entered.

X-Q. What did you do when you first entered? A. I

saw the sugar and the empty cans. I saw a ladder going up to the first floor. I went up the ladder to the first floor.

X-Q. Did you dismantle anything at that time? A. No, sir.

X-Q. Nothing at all? A. Nothing.

X-Q. Did you take any of the sugar out of the building? A. No sugar was taken from the building at that time.

X-Q. In other words, everythning remained as it was when you first entered? A. That's right.

X-Q. Then what did you do after observing the premises? A. I helped search through the building and found nobody there. So I went to the dwelling house. I knocked on the door. Nobody answered there, so I waited in the yard.

X-Q. Who waited with you? A. There were several of us there. There was Fletcher. There [59] was Regional Commissioner Henneberry and Chief of Enforcement McCarthy.

X-Q. Where were the other men? A. In the still building, I guess. Somebody was told to watch the building. There were some around to see if there was anybody in the building trying to get out they would have seized.

X-Q. No one was on the premises at all? A. That's right.

X-Q. Neither in the barn nor the Quirk home or the place where you found the so-called still? A. The only live ones around were the cows.

X-Q. You didn't try to milk any, did you? A. No, sir.

X-Q. Some time later you say that Robert Quirk appeared? A. Yes, sir.

X-Q. How did he come into the yard? Was he in a car or did he walk? A. He was in a car with his brother Gerald.

X-Q. Who first talked to either of the Quirks? A. I think I talked to them first.

X-Q. Did you identify yourself? A. I said who I was, yes.

X-Q. Who did you say you were? A. I said I was a federal officer and my name was Cataldo.

X-Q. Did either of them answer? [60] A. Either of them answer what?

X-Q. Answer you when you told them who you were? A. Yes. I told them we found a still on the premises, and Gerald wanted to know what it was all about. That's all he said. That's all I said to him. I asked Robert about it, and he said that he was a half-owner with his mother, Norma, of the premises. So I placed him under arrest.

Mr. Thompson: I assume this only bears on the people he is talking about.

The Court: That is right. The jury will understand we are trying, as has been pointed out to you, a conspiracy case, and we are also trying individual cases against each defendant. Now if there comes a time when you are satisfied that conspiracy has been established and that all or any of these defendants were parties to that conspiracy then anything that any one of them said or did at any time in furtherance of the object of the conspiracy can be used by you against anyone that you find was a member of the conspiracy. But until such time as you have come to the conclusion that a conspiracy has been established then, as Mr. Thompson has requested me to point out, evidence from any one of these defendants is only chargeable against himself. As of this moment the two Quirks are being questioned by this officer and whatever the Quirks said can be used against them but it cannot be used against the others, at least until such time as you may be satisfied [61] the conspiracy did exist between them. Go ahead.

X-Q. Mr. Cataldo, was there another road in the rear of the premises? A. If there was I didn't notice it.

X-Q. Where you were standing, do you know the name of the road? A. There was no road where I was standing.

X-Q. Where did you leave your automobile? A. I left it up at the shrine.

X-Q. You then went through the woods? A. That's right.

X-Q. When you were at the pond did you notice a road there? A. No, sir.

X-Q. Are you sure of that, sir? A. Positive.

Mr. Toltz: That's all.

Mr. Smith: No questions.

Mr. Lewald: I have no further questions, Mr. Ciadullo.

GENERINO CIADULLO, Sworn

Direct Examination by Mr. Lewald

Q. Your name, sir? A. Generino Ciadullo.

Q. Where do you live, Mr. Ciadullo? A. 122 Park Street, Medford.

Q. Do you have apartments there other than your own that [62] you rent? A. Yes.

Q. Did you in 1953 have an apartment at that address rented to one of the defendants, one of these people, sitting down in the first row? A. No.

Mr. Lewald: Mr. Goldstein, will you stand up?

[The defendant Goldstein stands up.]

A. Oh, yes. I looked over here [indicating]. Oh, yes. I'm sorry.

Mr. Toltz: We are not the defendants yet.

Mr. Smith: We will agree the defendant Goldstein rents an apartment from the witness.

Q. When did you rent the apartment to Mr. Goldstein? A. January 1, 1950.

Q. Who now occupies the apartment? A. Mr. Sam Gold.

Mr. Lewald: Thank you. I have no further questions.

Mr. Smith: No questions.

[63] NEWTON T. BRODERICK, Sworn

Direct Examination by Mr. Lewald

Q. Your name, sir? A. Newton T. Brodrick.

Q. Your address? A. 272 Melrose Street, Melrose, Massachusetts.

Q. Your employment, sir? A. New England Telephone & Telegraph Company, representative of the Legal Department.

Q. Did you bring with you certain records today? A. I did, sir.

Q. Do you have with you an application of the defendant Samuel Goldstein or Sam Gold? A. Samuel Gold.

Q. For a telephone? A. Yes, sir.

Mr. Smith: Well, we will agree he has a telephone, if that will save time.

Q. Was a telephone subsequently assigned to him? A. On January 11, 1950.

Q. The number was what? A. Mystic 6-5862.

Q. Do you also have a record of an application for telephone by a Frank Bettencourt? A. I do, sir.

[64] Q. When was that application filed? A. It was completed December 5, 1952.

Q. And a phone was given to him? A. Yes, sir.

Q. The number is what? A. The number at the time was Peabody 2271-M, subsequent to which it was changed to Jefferson 2-2271-M.

Q. Can we have the date of the change from the second number? A. No, that was when the Peabody was changed over to an exchange, Jefferson.

Q. When was that? A. That I don't know.

Q. It was changed from Mystic 6-5862? A. No, it was originally Peabody, and then it was Peabody-Jefferson; Jefferson is the exchange.

Q. That number is what? A. 2271-M, the same number.

Mr. Thompson: 22-what?

Mr. Toltz: —71-M.

Q. In your records, sir, do you have any record of any toll calls going between the number you have testified to and Mystic 6-5862, Mr. Goldstein?

Mr. Thompson: Objection.

Mr. Smith: Objection.

The Court: What is the objection?

Mr. Thompson: Objection, unless it is tied up in some way with the defendant, his agents or servants.

The Court: That is a matter of argument. I will allow the records to show—

Mr. Smith: May I state my objection?

The Court: Yes.

Mr. Smith: My objection is to the form of the question—the question being: Do you have a record of toll calls between these two numbers? I have no objection to the witness testifying that either one of these people, who have been identified as having telephones, made a toll call from their number, and that there is recorded in the records of the Telephone Company a number to which a phone call was made.

Mr. Thompson: I object to any— about any person—if there is, if he has a record of exchange between the two numbers.

The Court: He has to develop it a step at a time.

Mr. Smith: If I did say that—I don't mean I would agree a call was made from either one of the persons from the number he has described, either one of them. I would have no objection on behalf of Goldstein alone. I'm sure

my brother knows more about the rules of evidence than I do.

The Court: Well, now that is no admission to make.

Mr. Thompson: Note my objection.

The Court: I will allow the question.

[66] A. On February 19, 1954—

Mr. Thompson: February what?

The Witness: February 19, 1954.

A. —a call was placed from Peabody-Jefferson 2-2271-M at 4:45 p.m., to Mystic 6-5862. The call was completed and the disconnect was at 4:46 p.m.

Mr. Smith: I move to strike the answer on behalf of Goldstein.

The Court: No, I will allow it to stand for what it is worth.

Mr. Thompson: I ask that unless it is connected up, I ask that it be stricken later.

The Court: All right.

Mr. Lewald: No further questions.

Cross-examination by Mr. Smith

X-Q. You say that a phone was subsequently assigned to Mr. Goldstein or Mr. Gold? A. On January 11, 1950, service was installed for Samuel Gold, Mystic 6-5862.

X-Q. Did you use the term "subsequently assigned to him"? A. Not that I know of. I said, in connection with the Peabody number, I said the exchange was originally Peabody and then subsequently was changed to Peabody-Jefferson 2-2271-M.

X-Q. Do your records disclose who it was who had the number of [67] Mystic 6-5862 prior to Goldstein getting it? A. No. January 11, 1950. Nothing prior to that.

X-Q. Well, do your records disclose whether or not such a number was outstanding prior to January 1 of 1950? A. No.

X-Q. Your records do not show that? A. This is from January 11, on.

X-Q. Do your records show such a number was outstanding prior to January 11, 1950 to some other subscriber? A. No, sir.

X-Q. Does it show it was not outstanding? Do your records show it was not outstanding prior to January 11, 1950? A. No, only what I have testified.

X-Q. So from your records you can't tell us whether or not that number was issued and outstanding prior to January 11, 1950, to some other subscriber, can you? A. No, sir.

X-Q. Now then, in your testimony—of course your testimony is based solely upon whatever records you have there? A. Yes, sir.

X-Q. In respect to the phone call? A. Yes, sir.

X-Q. How long have you been with the Telephone Company? A. 25 years.

X-Q. During that period of time have you ever seen toll calls [68] charged up to one phone number in error?

Mr. Lewald: I pray your Honor's judgment.

The Court: I will allow it.

X-Q. Have you ever seen that happen in your 25 years with the Telephone Comany? A. I haven't seen it but I have heard of it.

X-Q. It isn't an infrequent or it wasn't an infrequent occurrence in the 25 years you have worked there? A. I can't say that.

Mr. Smith: All right.

Redirect Examination by Mr. Lewald

Q. Do you have a record, sir, with you on that listing that there was an objection raised by the party having the Mystic number?

Mr. Smith: Wait a minute. An objection made?

The Court: What is this?

Mr. Lewald: As to whether or not the toll call was made.

The Court: What? As to whether what?

Mr. Lewald: The toll call was made.

The Court: He testified to it.

Mr. Lewald: Mr. Smith pointed out that in 25 years, or he attempted to point out, that an error could be made along the line. I was just asking him, leading up to whether or not [69] anybody had disclaimed the telephone call.

Mr. Smith: It wouldn't be Goldstein.

The Court: Even this Court makes mistakes. I'm not making one now because I'm recessing the Court until two o'clock.

[Noon recess.]

[70] AFTERNOON SESSION

JOSEPH A. GIOVANNI, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Joseph A. Giovanni.

Q. Your address? A. 57 Melrose Street, Melrose.

Q. What is your occupation, Mr. Giovanni? A. I am the Treasurer of the Wharf Forging & Welding Corporation.

Q. Do you have any other duties besides being Treasurer of the Wharf Forging & Welding Company? A. No, I do not.

Q. Do you do other work down there? A. Oh, yes.

Q. What work do you do? A. We do ship repair work, manufacture tanks. I do some of the work and supervise.

Q. In September of 1953 were you requested to build

or fabricate a particular type of boiler tank? A. Yes, I was.

Q. Were you supplied blueprints for that tank by an individual? A. Yes. A man walked in with blueprints and asked me if I could manufacture these tanks. I told him that I could. He [71] asked me how much they would cost him.

Q. What was your price for these? A. The exact figure I don't recall. It was—I don't recall the exact figure.

Q. In order to complete this job did you have to obtain merchandise outside of that that you had in stock at your shop? A. Yes, I did.

Q. Will you describe what type of tank you were asked to build and where you got the materials to build it?

Mr. Smith: May we have the conversation?

The Court: Yes. Let's have the conversation.

A. Would you ask the question again, please?

Q. Would you give the entire conversation that was had between the person who solicited you to build the tank, what he said to you? A. I don't recall.

Q. To the best of your memory what he said?

Mr. Smith: I pray your Honor's judgment. He has answered and said that he doesn't recall.

The Court: He said he didn't recall exactly.

The Witness: Not exactly.

Mr. Smith: Oh, I see.

A. I don't recall the exact conversation. A man walked in, who I had never seen before in my life, and with blueprints, and asked if I could make some tanks for him. I told him I [72] could. We're in that business, steel fabricating business. And I remember he asked for a price, and the exact price I don't recall. I do recall we quibbled about the price a little bit. It seemed like a good transaction. So, he says, "All right. You can build these tanks for this amount of money." So I proceeded to do that.

Q. Did he tell you what this tank was for? A. The tank, he told me, I think the tank was going to be used in a laundry.

Q. Where? A. When?

Q. Where? A. Somewhere in South Boston. He didn't say exactly where.

Q. Will you describe what type of tank the first one you were supposed to build was? A. The first one was a cylindrical tank, about 9 foot long, 3 or 4 foot high, I don't recall the exact figures, with a coil inserted inside the tank.

Q. What was the structure of the coil to be? A. Well, a continuous pipe going back and forth inside the tank.

Q. And the coil was to be made out of what? A. Out of pipe, tubing, I'm sorry.

Q. What size pipe or tubing? A. I think it was 2-inch. [73] Q. Do you have your records concerning the construction of the job with you, sir? A. The records are here.

Q. Would they assist you in your memory? If they would, you may use them. A. They must be here somewhere.

Q. In order to construct this— A. They are here.

Q. this cylindrical tank, did you have to purchase stock outside of what you had on hand. A. Yes. I had to purchase from the New England Steel Tank Company the rolled plate and also the ends, which are called dished ends, from the New England Steel Tank Company of Quincy.

Q. And the rolled plate would be the outside of the tank? A. The tank itself, that's right.

Q. The tank itself? A. That's right. All we did was buy the parts from New England Steel Tank and fabricate those parts together.

Q. You also had to buy the pipe, did you not? A. The

pipe I bought from J. P. Perry. It was 2-inch pipe, 2-inch seamless pipe.

Q. During the construction of this tank did you later receive from the same person an additional order for other tanks? A. Yes. The same man came to me and wanted a number of rectangular open type tanks built.

[74] Q. Do you have the dimensions of those? A. Shall I look them up?

Q. If you would, please. A. I don't think I would have the dimensions here, Mr. Lewald.

Q. Would you recall the approximate dimensions? A. Approximately 3 foot by 2½ feet rectangular, approximately 3 or 4 feet high.

Q. They were rectangular tanks. Did they have a cover? A. No. That's merely a guess.

Q. Rectangular open tanks? A. Rectangular open at the top.

Q. How many were you asked to build or fabricate? A. I think it was nine.

Q. Did you have that material in stock or did you have to purchase it elsewhere? A. We didn't. We purchased that material from the Lechmere Construction Company of Cambridge.

Q. While these nine were in construction did you later receive additional orders from the same man? A. Yes. I received an order for two additional tanks.

Q. Of what type? A. The same type.

Q. Of the square or rectangular open top type? A. Yes.

Q. Did you deliver these tanks anywhere, all these tanks? [75] A. No, we didn't.

Q. What happened to them? A. This same person picked some up himself and took them away. We loaned him our truck. He seemed to be a personable fellow. We loaned him our truck to deliver the rest of them.

Q. And you were paid for this work, were you not? A. Yes.

Q. How were you paid? A. You mean for the tanks?

Q. Yes. A. In cash.

Q. Did this man tell you his name? A. He did not.

Q. When did you next see those tanks, sir, after they left your shop? A. Some time later. Mr. Skelly I think his name was—

Q. Do you see him here in court? A. The one there, Mr. Skelly [indicating]. I think that was in February of the next year. He came to me and asked me if I would go to Sudbury to look at some tanks he thought I might have made. I went to Sudbury, and my name was written all over those tanks in very large yellow letters. I couldn't deny I had made them.

Q. They were the tanks you had made? A. They were the tanks I had made.

[76] Q. Did Mr. Skelly also show you several photographs of individuals at that time or just prior to going to Sudbury? A. Yes. Mr. Skelly showed myself and all of the man that worked on the tanks photographs.

Q. Were you able to identify a particualr photograph as the person who ordered the tanks? A. I said there was a man there I thought looked like the man that ordered the tanks.

Mr. Smith: I pray your Honor's judgment.

The Court: I will allow that.

Q. I show you this piece of paper entitled Statement of Joseph Giovanni, 57 Melrose Street, Melrose, Mass., dated March 8, 1954.

The Court: Who is he?

Mr. Lewald: The Witness, your Honor.

The Court: Oh, you are the witness, Giovanni.

Q. Would you read the first paragraph on Page 4 and see if it refreshes your memory?

Mr. Smith: Wait a minute. I object.

The Court: To his reading it?

Mr. Smith: Yes.

Mr. Lewald: Reading it to himself?

Mr. Smith: I object.

The Court: I will allow him to read it to himself. Read it to yourself.

[77] [A pause.]

Q. Sir, does that refresh your memory of what you said to Mr. Skelly at that time?

Mr. Smith: Objection.

The Court: I will allow that question. Does it refresh your memory? Yes or No?

The Witness: Yes, it does refresh my memory.

Q. At that time you were shown several pictures, were you not? A. I was.

Q. Did you then identify by pictures—

Mr. Smith: I object to the question.

Q. Did you then pick out a particular picture?

Mr. Smith: Objection.

The Court: I sustain the objection. I don't mind the question — whether he picked out pictures or not, but that is as far as you can go. No identification by this witness. This is coming in the back door.

Q. Did you pick out a particular picture? A. I don't recall.

Q. Yes or No.

Mr. Smith: He says he doesn't recall. I pray your Honor's judgment to the pressing.

The Court: There is no question pending. He says that he doesn't recall.

The Witness: I don't recall whether I picked out a [78] particular photograph or whether he showed me one.

The Court: Mr. Witness, there is no question pending now.

Q. Would you come down here, Mr. Giovanni? A. Yes, sir.

[Witness leaves the witness stand and goes to a position just outside the bar enclosure.]

Q. Will you point out the man who came to your shop in September of 1953?

Mr. Smith: Objection. If he can?

The Court: What is that?

Mr. Lewald [to Mr. Smith]: Will you wait until I finish the question, Mr. Smith? May I have that courtesy?

Mr. Smith: I beg your pardon. If I have been discourteous, I am sorry.

Q. Would you point out the man who came to your shop in September of 1953 and ordered these tanks you have just told us about, if you can? A. I think it was that man [indicating].

Q. Would you point him out? A. That man [indicating.]

Mr. Lewald: Would you stand up, sir?

Q. Pointing at this man, Mr. Goldstein? A. Yes.

Q. Would you resume the witness stand?

[Witness returns to the witness stand.]

[79] Q. How many times did this man come to your shop? A. I think around three or four times.

Q. Did he come at any time to check on the progress of the work? A. Yes, he did. He was in for a short time each time.

Mr. Lewald: I don't think I have any further questions.

Cross-examination by Mr. Smith

X-Q. Mr. Castellani, is it? A. No, Mr Giovanni.

X-Q. I'm sorry. How many times in all did you see the man, a man, who came in and ordered these tanks from you that you have been talking about? A. Three or four times, I think.

X-Q. And you had conversations with him each time? A. Yes, short conversations.

X-Q. On one occasion you allowed him to borrow the truck of the company? A. Yes, I did.

X-Q. You saw him at that time? A. Yes.

X-Q. What time of day was it that you saw him on each of these occasions? Was it always during daylight or at night? A. It was daylight.

X-Q. About how far away from him were you standing at the time you had conversations with him? [80] A. Well, I would say next to him.

X-Q. Standing next to him. At some time, after he took delivery of these tanks, after he, a man, took delivery of these tanks, you were visited by an agent of the Alcoholic Tax Unit, were you? A. Yes, I was.

X-Q. You were shown some pictures, is that right? A. Yes.

X-Q. Well, now I think you testified that at the time, you said to the agent that you thought one of the pictures looked like the man. Is that what you testified to? A. I did say that.

X-Q. That is what you so told the agent, is that right? A. To the best of my knowledge that's what I told him.

X-Q. Have you seen that man again from the time he took delivery of the tanks up until today? A. No, I never have.

X-Q. You never have. I think you said that the man was a jovial looking man? A. I didn't say that. I said personable.

X-Q. Personable. Do you say now that this is the personable man that you saw in your premises? Do you say now this man is the man you saw come into your premises and order the tanks? A. I think so, yes.

X-Q. Do you say unequivocally he is that man to the best of your [81] knowledge? A. I just think so.

X-Q. You just think so. Well, of course, sir, that means, does it not, you have some reservation in your mind?

Mr. Lewald: I pray your Honor's judgment to the question.

The Court: What?

Mr. Lewald: I object to the question.

The Court: I will allow it.

X-Q. Do you have some reservation as to whether or not he is the man? Isn't that so? A. Yes. I didn't see the man very much and haven't seen him for almost four years.

X-Q. So that you can't say now, you can't now make a positive identification of the defendant Goldstein as being the man who came in, can you? A. No, I cannot, not positively.

Mr. Smith. That's all.

Redirect Examination by Mr. Lewald

Q. You say you can't positively say so? A. No, I cannot, Mr. Lewald.

Q. You testified that you said you think that is the man there, pointing to Mr. Goldstein? A. That's right.

[82] Mr. Smith: Wait a minute. I pray your Honor's judgment.

The Court: You brought it out.

Q. What are your reasons for saying that, sir?

Mr. Smith: I object.

The Court: No

A. Well, I'm not—

Mr. Smith: Wait a minute. There is no question.

Q. Does he look like the man?

The Court: No. You can't have that. He says he thinks he's the man but has some reservations.

Mr. Lewald: Might I ask him what the reservations are?

The Court: Oh, sure. They're not Indian reservations. Go ahead.

Q. What are your reservations, sir? A. Well, I don't know exactly what you mean by reservations.

Q. You used the word or you adopted Mr. Smith's word. A. I mean I have doubt in my mind.

Mr. Smith: "I have doubt in my mind."

A. [continuing] I only saw the man two or three times. That was four years ago. I never seen him before or since.

Q. Have you read the statement you gave on March 8? A. Yes.

Mr. Smith: Objection.

[83] The Court: Of course he read it. You saw him read it.

Mr. Lewald: I offer it for impeachment purposes.

The Court: No. You're not going to impeach this witness or even try to. This witness has shown no hostility.

Mr. Lewald: May I come to the bench on this?

The Court: Sure, you may.

[Conference at the bench between Court and counsel, not taken.]

Q. I show you this piece of paper, sir. I ask you to look at the back of it, if you will. Does that bear your signature? A. It does.

Q. Would you tell us the circumstances of the occasion whereby you put your signature on that?

Mr. Smith: I object.

The Court: I would like to examine it first.

[Mr. Lewald hands document to the Court.]

[Conference at the bench between Court and counsel as follows:

Mr. Lewald: He said he thought it was the man.

The Court: I'm not letting that in. This witness has not shown hostility.

Mr. Lewald: I offer to show the witness identified—or I would like to ask him whether or not he identified this picture as the man who came down to his [84] place in 1954.

The Court: No. The best evidence is what he does today; what he did some other time, I don't know.

Mr. Lewald: This happened in 1953, some four years ago.

The Court: I am not allowing the picture in. Your rights are saved.

Mr. Lewald: Whose rights?

The Court: Your rights are saved.]

Mr. Lewald: I have no further questions.

Mr. Smith: No questions.

CYRUS AMERAULT, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Cyrus Amerault.

Q. Your address? A. 45 Beacon Street, Winthrop.

Mr. Thompson: What is the name?

The Court: Talk louder.

The Witness: Cyrus Amerault, 45 Beacon Street, Winthrop, Massachusetts.

Q. And where are you employed now, sir? [85] A. Wharf Forging & Welding Company.

Q. How long have you been employed there? A. Seven years.

Q. You are employed as what, sir? What do you do there? A. Welding, general work, all around.

Q. Did you hear the testimony of Mr. Giovanni? A. Yes.

Q. Did you heat him describe certain tanks that were fabricated at his shop? A. Yes, sir.

Q. In September of 1953? A. Yes, sir.

Q. Did you work on those tanks? A. Yes, sir.

Q. What exactly did you do in regard to those tanks? A. Weld.

Q. You welded them? A. Yes.

Q. During the time these tanks were being fabricated did someone, not an employee of the shop, come down to look at the progress of these tanks? A. Yes.

Q. Did you see that man here in court? A. I'm not sure.

Q. Do you see anybody that looks like that man here? [86] Mr. Smith: I object.

The Court: If he can identify the man, let him; if he can't, say so.

A. I'm not sure of the man.

Q. Will you come down here, if you will, sir? A. Sure.

[Witness leaves the witness stand and goes to a position outside the bar enclosure.]

Q. Would you look around?

The Court: Look at the front row only, please.

Q. Look at the front row. A. Well—

Mr. Smith: There is no question.

Q. Come with me. Look at the people, please. Look at them. Do you now see that man, sir? A. [Inaudible.]

The Reporter [to the witness]: Would you repeat the answer, please?

A. I said there's a man there that looks like the man that came to our shop.

Q. Would you point that man out?

Mr. Smith: I object.

The Court: No, unless he is fairly convinced that is the man he saw.

Q. Resume the stand.

[The witness returns to the witness stand.]

[87] Mr. Lewald: May I come to the bench on that?

Mr. Smith: May we have the stenographer?

[Conference at the bench between Court and Counsel as follows:

Mr. Smith: I think at the close of his answer he said, "I can't identify him."

Mr. Lewald: I didn't hear that. Let me get through with what I was going to say. This witness said, "One of the men looks like one, like that man who came to the shop." I am asking the Court to allow it for what it is worth. I realize it is not a positive identification. Certainly "looks like" coupled with other evidence—

Mr. Thompson: Don't I look like him, the defendant? Don't I?

Mr. Lewald: Mr. Smith is entitled to pursue it. I think I am entitled to that.

The Court: No, I don't think so.

Mr. Smith: I would like on the record, at the end of the answer, we all heard it back there, he said, "I can't identify him."

The Court: I didn't hear it.

Mr. Lewald: I didn't hear him say that.]

Q. Sir, were you shown a group of pictures back in 1954? A. Yes, sir.

[88] Q. Well, at that time were you asked whether or not you could identify any of the pictures as to the man who came down to the shop looking at the progress of the work? A. Yes, sir.

Q. Did you so identify a picture at that time?

Mr. Smith: I object.

The Court: I will allow if he identified the picture I won't allow the picture in evidence.

A. Yes.

Q. Your answer is Yes? A. Yes.

The Court: You can make an offer of proof, but with the same decision, the picture—

Mr. Lewald: The offer of proof I would make—this is the picture shown to him at that time.

The Court: That's right. He agreed to it. Ask him again if you want.

Q. Is that the picture that was shown to you at that time, sir? A. That's the picture that was shown to me at that time.

Q. That bears your signature on the back of it, does it not? A. Yes.

The Court: You can mark them both for identification, if you want to.

The Clerk: Government's Exhibit 6 for Identification.

[Photograph marked Plaintiff's 6 for Identification.]

[89-90] Mr. Lewald: I have no further questions of you, Mr. Amerault.

Mr. Smith: No questions.

The Court: Step down.

[91] JOHN F. McGOVERN, Sworn

Direct-Examination by Mr. Lewald

Q. Your name? A. John F. McGovern.

Q. Where do you live, sir? A. Sudbury, Massachusetts.

Q. Your position, sir? A. Chief of Police.

Q. Do you know any of the defendants, sir, sitting in the front row? A. Yes, sir.

Q. Who do you know? Who are you acquainted with? A. Robert and Gerald Quirk.

Mr. Lewald: Would you stand up, Mr. Robert Quirk?

[The defendant Robert Quirk stands up.]

A. That is Robert.

Q. And the fellow sitting beside him is whom? A. Gerald.

Q. Did you have occasion to go to certain premises on Mossman Road on February 24, 1954? A. I will have to refer to my papers.

Q. Or February 23rd? A. February 23rd is right.

Q. When you first arrived there were the defendants you have identified present on the farm? [92] A. No, they were not to my recollection.

Q. Do you know whose farm that is, sir? A. I understand it is the Quirk's farm.

Q. Do you know who the record owner is? A. Not officially.

Q. When you arrived there, sir,—are you acquainted with the buildings of the farm? A. Reasonably so, yes.

Q. Did you go to the shed-like structure in back of the cow barn? A. Yes.

Q. What were your observations as you entered that building, if you did? A. Well, I saw a large boiler and a large sort of metal constructed, well, it looked almost like a tower. I saw a great many cans which I would believe would hold five gallons, some wrapped in paper and some opened, and a substance in the cans which smelled like alcohol. That is about all I can remember in the building. There were some large tanks full of what I was told was mash.

Q. When did you first see the defendant, Robert Quirk, that day, if you did? A. Some time after I arrived there to the best of my recollection. I think I met him in the cow barn.

Q. In the cow barn? [93] A. In that vicinity.

Q. Did you see any of the other defendants that day? A. Gerald was, I believe, in the process of milking the cows.

Q. Did you have any conversation with either Gerald or Robert? A. The only thing that stands out in my mind at this time is that I did say to Robert—

Q. Did you have some conversation? A. Yes.

Q. Did he make answer to your questions? A. No. I don't recollect that he did.

Q. There were other people on the premises when you arrived? A. Yes, there were.

Q. Are you able to identify any of them? A. The one I knew at the time was Mr. Fletcher of the Internal Revenue Service. Later I became acquainted with others.

Mr. Lewald: Thank you, sir.

Cross-Examination

X-Q. [By Mr. Thompson] Tell me what the five gallon cans looked like? A. Shiney metal construction.

X-Q. Tinny looking? A. Tinny, I would say.

X-Q. Square? [94] A. Not exactly square. They were a little higher than they were wide.

X-Q. I mean, were they round? A. No.

Mr. Thompson: That is all.

Mr. Lewald: I have no further questions.

The Court: Step down.

Mr. Lewald: The representative of the Registry of Deeds.

Mr. Toltz: If there is any question about it, I would agree it is in the name of Robert and his mother.

Mr. Lewald: I was going to introduce the deed.

Mr. Toltz: I will agree to it and save the time.

The Court: If it is agreed there is no sense in putting it in.

I understand the defendant Quirk agrees that the property in question, the real estate, was owned and under the control of Quirk and his mother.

Mr. Toltz: That is correct, your Honor, Robert Quirk and his mother.

The Court: You need not prove it then.

Mr. Lewald: Mr. St. Germain.

ALBERT ST. GERMAIN, Sworn

Direct-Examination by Mr. Lewald

Q. Your name, please? [95] A. Albert St. Germain.

Q. Your address? A. Beacon Road, South Sudbury.

Q. What is your occupation? A. Fire Chief with the duties of building and wiring inspector, Town of Sudbury.

Q. What were your duties in February of 1953? A. Fire Chief and building and wiring inspector.

Q. On February 23, 1954, did you have occasion to go to a farm on Mossman Road? A. Yes, I did.

Q. Were you acquainted with who owned the farm? A. Well, I knew it was the Quirk farm.

Q. About what time did you get there? A. Around 5:30 p.m.

Q. Did you have occasion to go into certain of the buildings on the premises? A. Yes, I did.

Q. What buildings did you first go in? A. I went into the building that contained the so-called contraband.

Mr. Thompson: Was that the 24th or 23rd of February?

The Witness: What is that?

Q. What date did you first go there, sir? [96] A. I went there on February 23rd, the evening of the raid.

Q. I show you Government's Exhibit 5 and ask you whether or not that is the building you entered? This is Government's Exhibit 5-F. A. That is the building.

Q. Did you make some observations on the premises of this building or inside this building? A. Yes, I did.

Q. Will you tell us what observations you made? What did you see? A. What I can recall, I saw a large upright steam boiler with a large gun-type oil burner in it; two 275-gallon fuel oil tanks in the lower level next to the boiler, some bags of sugar. Upstairs there was some 5-gallon square type tin cans, some empty and some wrapped in paper. Some had a liquid in it that smelled like

alcohol. There were some bags of sugar there, several oblong open-type tanks, which had a foamy substance on the top, and I was told it contained mash.

Mr. Toltz: I object.

The Court: I sustain the objection.

A. [Continuing] Also a large copper column that came up, as I recall, from the first story up through the second story; also a long round closed tank which supposedly was the cooker.

[97] Mr. Toltz: I object to that, if your Honor please. I object to the "supposedly".

The Court: Better strike the word "supposedly" unless you know.

Q. Well, now after your observations did you check the wiring that was in that particular building containing these objects you have testified about A. Yes. The first thing I was curious about was where it was receiving the source of power. I noticed some poles had been recently set from the street into this building with wires overhead that ended at the building. These were not connected into the building. So then I became interested to find out where the electric power was coming from, and I found an underground cable that went from this building in question to the cow barn.

Q. How did it get from this building to the cow barn? A. Underground, buried. And then from that corner of the cow barn nearest to this building it went overhead, as I recall, to the opposite corner of the cow barn and from there to the dwelling house, the large house, and it went from there to the barn underground.

Q. Did this appear to be recent wiring to you, sir? A. What is that?

Q. Did this appear to be recent wiring? A. That was hard to say. I couldn't say whether it was.

[98] Q. Did you search the records of the wiring inspector to determine whether or not—

Mr. Toltz: I object to it.

The Court: There is no charge of unauthorized wiring, is there?

Mr. Lewald: No, there is nor, sir.

Q. Did you find an electric meter on the premises? A. No, there was not.

Mr. Toltz: I object.

The Court: I will allow it. You say there was no meter?

The Witness: No.

Mr. Lewald: No further questions.

The Court: Step down.

Mr. Toltz: I would like to ask a few questions.

Cross-Examination by Mr. Toltz

X-Q. You want the jury to understand there was no electric meter at all on these premises? A. Not in this building.

X-Q. There was an electric meter on the premises? A. Yes.

X-Q. All the wirning went to the same meter? A. That is right.

X-Q. Isn't that so? A. Yes, sir.

[99] X-Q. The same underground wiring that went into the big house, the same kind of underground wiring went into this place where this contraband was, is that correct? A. I wouldn't say it was the same kind, particularly the same brand. It was underground cable.

X-Q the same type of underground cable? A. It was an underground cable.

X-Q. An underground cable that went from the cow barn to the house where the Quirks lived and to this particular building, is that right? A. Yes.

X-Q. As a matter of fact, there is an apartment upstairs in the building where this contraband was, is that right? A. There is now.

X-Q. Do you know whether there was one then at the time? A. I don't recall seeing one.

X-Q. Did you go up there? A. I was in the building, yes.

X-Q. Would you want to say positively that there was no apartment upstairs?

The Court: Are you going to have some evidence that deals with that?

Mr. Toltz: Strike it out.

X-Q. Mr. Witness, do you know this farm pretty well, the layout? A. Fairly well, yes.

[100] X-Q. Do you know where the pond is? A. Yes, sir. Which pond? There are several ponds on the property.

X-Q. Well, do you know the pond that is in the back of this barn or house we are talking about? A. Yes. I was there a few days ago.

X-Q. There is a road there from that pond that leads to this house? A. You could call it a wagon road. You can go through it with a car. It isn't too good.

X-Q. A car can go through? A. Right by the pond.

X-Q. And go right up to the house? A. Yes. It comes up into the house yard.

X-Q As a matter of fact, the road continues on for some distance? A. Yes. It goes out through several fields. I can't say the road was there at that time. It is there now.

X-Q. Had you looked at the time? A. No.

X-Q. Had you gone near the pond at the time? A. No, sir. I didn't know there was a pond there until two weeks ago.

X-Q. You were the Fire Chief? A. Yes, sir.

X-Q. You didn't know there was a pond there in back?

[101] A. No, sir. You see, I had only been Fire Chief for a very few months at the time. The former Fire Chief is dead.

X-Q. Had you been on the Fire Department prior to being chief? A. Yes.

X-Q. How long?

The Court: Let's not go into that. You have his statement that he did not know there was a pond there. We are trying the defendants, not this man.

Mr. Toltz: All right. That is all.

Redirect-Examination by Mr. Lewald

Q. This wire that you told us came from the shed premises underground to the cow barn and then through the cow barn and then underground to the main house, was that the source of supply for the barn lights, if you know? A. Yes.

Mr. Lewald: No further questions, Mr. Mazaka.

WALTER A. MAZAKA, Sworn

Direct-Examination by Mr. Lewald

Q. Your name, please? A. Walter A. Mazaka.

Q. Your address? A. 35 Amaranthe Avenue, Medford.

Q. By whom are you employed, sir? A. The Alcohol and Tobacco Tax Division, Internal Revenue Service.

[102] Q. How long have you been so employed? A. About fifteen years.

Q. On February 23rd did you have occasion to go to this Quirk farm along with other agents or inspectors? A. Yes, sir.

Q. About what time did you arrive? A. Approximately 4:15 p.m.

Q. Upon arriving at the farm did you have some particular duties assigned to you? A. Yes, sir.

Q. What did you do after you arrived at the farm? A. We were assigned—

Q. What did you do, sir? A. What do you mean?

Q. What did you do personally when you got to the farm? A. I don't understand.

The Court: Answer the question. What did you do there?

The Witness: Well, we went to the rear of the building or the rear of the farm, and our purpose was to—

The Court: We didn't ask you the purpose. He asked you what you did. Tell us that.

Q. What did you do, sir? A. I went to the rear of the barn on the Quirk farm on Mossman Road, Sudbury.

[103] Q. Upon arriving at the farm what did you next do? A. Well, after I heard investigator—

Mr. Toltz: I object to anything he heard.

The Court: Tell us what you did. Do you understand the question? What did you do there?

A. Well, on a signal we came from the rear of the barn and came up to the shed or barn where the still was located. We went into the building.

Q. How did you get into the still building? A. I went in through a window.

Q. After you got inside, sir, what did you do? A. I heard a liquid flowing. I looked around and determined that the valves of the tanks were in an open position. I went around to the tanks and shut off the valves with another investigator, and the liquid stopped flowing.

Q. What did you do after you shut off the valves that were on the tanks? A. Well—

Q. What did the tanks contain, if you know? A. To my knowledge they contained mash.

Q. Was this mash running out of the pipes? A. Yes.

Q. After shutting off the valves what did you do next?

[104] A. Well, I went around and looked around to see

if there was anybody in the building. I checked around. Nobody was there.

Q. Did you make some observations of what machinery or other things were on the premises? A. Yes, sir. I saw some vats, steel tanks, a column, big tank, horizontal tank approximately 9 x 5 feet known to me as a cooker, and there were 5-gallon cans, quite a few 5-gallon cans, a quantity of sugar, a lot of pipes, valves, and quite a bit of paraphernalia used in that type of operation.

Q. Was this stuff hooked up or otherwise? A. Yes, sir, it was all connected. The thing was shut down. There was quite a bit of heat. The mash was there.

Q. Did you some time later check over the premises? Did you at some time later make a more detailed inspection as to the things on the premises? A. Yes, sir.

Mr. Toltz: When?

Q. When did you do it? A. Right there. I looked around and saw on the side of the mash vats or tanks a word in yellow crayon Wharf Forge. I looked down at the cooker and across the cooker in yellow paint was the words New England Steel Tank, South Boston, Massachusetts. Off in a little room, off the [105] distillery room, was a cot, a mattress that had a cover on it, a cloth-like substance, and on the end in ink was stenciled "809 Quirk Road". There was also a large cardboard carton that had the name written in black crayon Malden Supply Company, that formerly contained the Sparton Shower.

The Court: We will take the afternoon recess here.

[Recess.]

[Conference at the bench between Court and counsel as follows:

Mr. Toltz: Counsel has called to my attention the fact that when I said we agreed on ownership there

was also the word "control". Of course we do not agree to control.

The Court: Owner and in control of the real estate is what I said.

Mr. Toltz: I didn't catch the "control" then. I don't want to jeopardize my client. Ownership, not control. I missed it.

The Court: I said "owned and controlled it" in the sense they had the right to lease it to somebody. I don't mean they were the ones that were occupying it and making moonshine.

Mr. Toltz: All right. Let it stand as it is then.

[End of conference at the bench.]

[106] Q. We were talking about the observations you made on the premises. Did you take any samples from the premises or take any samples of things on the prem ises? A. Yes, I did.

Q. What did you do? A. With Investigator Judd we took samples of each mash vat. We submitted the samples to Investigator Daley.

Q. After you took them, you put them into a container? A. Yes.

Q. And initialed them? A. Yes.

Q. You turned them over to Mr. Daley? A. Investi gator Daley, yes, sir.

Q. Where did you turn them over to Mr. Daley? A. On the 24th.

Q. Where? A. At the still premises.

Q. What time did you say you arrived at the still premises? A. On what date?

Q. On the 23rd. A. On the 23rd we arrived there at approximately 4:15.

Q. What time did you leave? A. That evening?

Q. Yes. When did you leave there? A. We left about 8 p.m. that evening.

[107] Q. When you left the premises who was there A. There were other investigators. Investigator Cataldo, Watson, Judd, Paige, Piskadlo, Supervisor-in-Charge, Mr. Fletcher.

Q. Was anything removed from the premises in the way of machinery or physical objects during the time you were present? A. No, sir, not to my knowledge.

Mr. Lewald: I have no further questions.

Cross-Examination by Mr. Toltz

X-Q. Mr. Mazaka, when other then February 23rd were you at these premises? A. I was there February 19th.

X-Q. Who was with you? A. Investigator Cataldo.

X-Q. Where in relation to this barn we are talking about or structure were you on the 19th? A. I was approximately 700 feet from the barn.

X-Q. Was that near the pond or beyond the pond that has been testified to here? A. It is about at the pond.

X-Q. From where you were could you see the cow barn? A. I could see parts of it, yes.

X-Q. What parts could you see? A. Just the top.

[108] X-Q. You could not see the doors of that barn? A. I didn't see them.

X-Q. Did you walk down nearer the barn at that time? A. No, sir.

X-Q. Where you were standing with Cataldo there was a road, is that right? A. I don't recall seeing a road.

X-Q. Was there not a road large enough for a car to come down, an automobile to travel on, from the rear of this barn we are talking about to where you were standing? A. I didn't see any road.

X-Q. Didn't you walk down a road? A. No, sir.

X-Q. When you went on the premises did you walk down any road? A. What day was that?

X-Q. On the 19th. A. When I went to the rear of the barn?

X-Q. Yes. A. No, I didn't.

X-Q. Where did you walk? A. Out in the field.

X-Q. Grassy field? A Yes, sir

X-Q. When you entered from near the shrine, did you walk on the road? [109] A. No, sir.

X-Q. On the 23rd, when you were there, did you notice there was a road running by this barn toward the pond? A. No, I didn't.

X-Q. Did you notice there was a road running to the right of the barn toward the shrine? A. No, I did not.

X-Q. Did you notice Route 117 just outside of the premises of the Quirks? A. When I was in the rear?

X-Q. Yes. A. No, sir.

X-Q. Do you know where Route 117 is? A. I know where the road is, yes, sir.

X-Q. Where you on that road at any time? A. At that time, the 19th?

X-Q. Or the 23rd. A. I may have been on the road.

X-Q. Don't you know whether you took the road? A. Route 117?

X-Q. Yes. A. Yes.

X-Q. You did take that road when you went to the Quirks, didn't you? A. From Waltham, yes.

[110] X-Q. Did you notice a big house that the Quirks, senior, lived in? A. I wasn't in that area that day.

X-Q. Were you in that area on the 23rd? A. No, sir.

X-Q. You were not there that time either? A. No, sir.

X-Q. In other words, from where you were in the barn, where this contraband was, you did not see the big Quirk house, is that right? A. That's right.

Mr. Toltz: That is all, sir.

Mr. Lewald: I have no further questions.

The Court: Step down.

ARTHUR P. MULLIN, Sworn

Direct-Examination by Mr. Lewald

Q. What is your full name please? A. Arthur P. Mullin.

Q. Your address, Mr. Mullin? A. 13 Olney Street, Watertown.

Q. Your occupation? A. Electrical salesman, electrical supplies.

Q. In the fall of 1953 where were you employed? A. Watertown Electrical Supply, Watertown, Mass.

Q. In the same capacity as a salesman? [111] A. Yes, sir.

Q. I show you these slips of paper, sir, and ask you if you can identify them. A. Yes, sir, these are cash sales slips.

Q. In your writing? A. Yes, sir, they are. This one is not. I priced it. The other three are.

[Mr. Lewald hands sales slips to defendants' counsel.]

Mr. Toltz: I object to these for the Quirks.

Q. Sir, would you be able to tell us when you made these writings that appear on the slips of paper? A. The dates are on them. October 16, 1953.

Mr. Toltz: I object.

The Court: What are those records, Mr. Witness?

The Witness: These are the records of the company for the merchandise sold on that day. He asked me for the dates.

The Court: Are these kept in the regular course of business by you?

The Witness: Yes, sir. They are saved in our files.

The Court: I will admit them.

Q. Sir, to whom did you make sales of those particular items in those records? [112] A. Robert Quirk.

Q. On each of the occasions represented by those rec-

ords there did he come into the store? A. Yes, sir, he did.

Q. On any of these occasions did he come in with anyone else? A. No. He was alone.

Q. On these occasions what did he do? A. He bought devices used in wiring, panel, boxes, wiring, and so forth.

Q. Will you tell us what those records contain, what he bought? A. He bought regular household wiring and boxes to hold receptacles, a breaker panel, oil burner plate, connectors, cables, clamps.

Q. On what dates did he buy the objects you have told us about? A. October 27, 1953.

Q. And the next time he came into the shop was when? A. Well, the first was October 16, and the second on October 27th, the one I just read, and the next one following that was October 27th.

Mr. Lewald: I offer these.

The Clerk: Government's Exhibits 7-A, B, C and D.

[Sales slips of Watertown Electric Supply Company marked Government's Exhibits 7-A through 7-D.]

[113] Q. I show you Government's Exhibit 5-X and call your attention to this box-like structure running into where there is a wire. A. Yes.

Q. I ask you whether or not that box is similar or identical to the type of article contained or some of the articles contained in these records that you have of goods you sold to Mr. Quirk.

Mr. Toltz: Objection.

The Court: I will allow it.

A. I carry a panel like that in stock. I sold him one. I don't know if it is the same one. It is the same type.

Q. It is the same type? A. Yes.

Mr. Lewald: Thank you. I have no more questions.

Cross-Examination by Mr. Toltz

X-Q. Mr. Witness, there was nothing unusual about the sale of these fixtures on 10/16/53? A. No, sir. These are

ordinary items used in almost any home for wiring any type of home.

X-Q. Any type of home? A. Yes.

X-Q. There would be some wiring? A. That's right.

X-Q. He gave his name as Robert Quirk? [114] A. Yes.

X-Q. Is that right? A. Yes, he did.

X-Q. All of them are made out to Robert Quirk, is that right? A. Yes, sir.

X-Q. And in that picture—

Mr. Toltz: Can I see that picture?

Mr. Lewald: I gave it to Mr. Thompson.

Mr. Thompson: I thought it was the cow barn. I was mistaken [handing photograph to Mr. Toltz].

X-Q. There is nothing unusual about that box that you pointed out in the picture? A. No, I sell dozens of them.

X-Q. Other companies like yours sell them? A. Yes.

X-Q. I could go into any hardware store and buy that? A. Any electrical supply store.

X-Q. You can't say that is what you sold Mr. Quirk? A. I couldn't say that, no.

Mr. Toltz: Thank you.

Mr. Lewald: Mr. Black? Mr. Goodwin? Mr. Jordan? Mr. Prebender? Mr. Curtin?

FREDRICK D. CURTIN, Sworn

Direct-Examination by Mr. Lewald

Q. Your name, please? [115] A. Frederick D. Curtin.

Q. Your address? A. 11 Business Street, Hyde Park.

Q. Your occupation? A. Salesman.

Q. You are a salesman for whom? A. At the present time I work for the Home Supply Company, Brighton, Massachusetts.

Q. In December of 1953 for whom did you work? A. Waltham Supply Company, Waltham, Mass.

Q. In what capacity were you working for them? A. I was a salesman in the plumbing division of the Waltham Supply Company.

Q. I show you this piece of paper here and ask you if you can identify it. A. It is my printing and I sold the material on there.

Q. What is it, sir? A. Well, the first item is one 2-inch check valve.

Q. What is the paper itself? A. It's a sales slip from the Waltham Supply Company.

Q. And it is a slip made in the regular course of business there? A. That's correct.

Q. Is it your duty to make it? A. That's right. My name is on it, as sold by me.

[116] [Mr. Lewald hands sales slip of Waltham Supply Company to defendants' counsel.]

Q. I show you this piece of paper, sir, and ask you if you can identify it. A. That is also a sales slip made out by me.

Q. On what date? A. The date here is December 7, 1953.

Q. The articles contained on the slips are what, sir? A. Articles of plumbing.

Q. What are they? A. Well, on December 21, one 2-inch check valve; two 2-inch black unions; two 2-inch closed nipples; one 2-inch cast iron tee.

Q. Would you come down a minute, if you will, sir? A. Yes, sir.

Q. Can you identify any of the articles from the sales slips that are on the floor? A. This is the first item, on the December 2nd slip, a 2-inch check valve.

Q. Do any of the other items appear there? A. Yes. This is the closed nipples we sold.

Q. On either side of the valve? A. That is right. I believe that's all that is listed here.

Q. On either of the slips? A. Yes, sir.

[117] Q. You can resume the stand.

Mr. Lewald: I now offer these slips.

The Clerk: Government's Exhibits 8-A and 8-B.

[Sales slips of the Waltham Supply Company dated December 7, 1953 and December 2, 1953, marked Government's Exhibits 8-A and 8-B, respectively.]

Mr. Lewald: Your witness.

Cross-Examination by Mr. Toltz

X-Q. Mr. Witness, are these articles that can be bought in any plumbing supply house? A. Any real plumbing supplier would carry them.

X-Q. Those two objects you identified, can you say that those are the two that you sold? A. No, I couldn't say that. They are the same size and the same make.

X-Q. And it is a common object, isn't it? A. Well, not common, not a 2-inch valve. A 2-inch valve wouldn't be used in an ordinary house for ordinary construction.

X-Q. But it could be bought in different supply houses? A. Any really good plumbing supplier would have them in stock.

X-Q. You don't see any of these other items that you have on this slip here in the court house, do you?[118] A. No. I just see the 2-inch check valve and the nipples.

X-Q. And, as you say, you can't say those are the two objects you sold? A. No, I couldn't say that, sir.

X-Q. And the name to whom they were sold, who gave you that name? A. The man that purchased the material.

X-Q. Do you know that man? A. I never knew him before. Did I know him personally?

X-Q. Do you know him now? A. I think I could describe the man. I'm not sure I could recognize him.

X-Q. You can't recognize him? A. I wouldn't say. I don't know.

The Court: Could you point him out if he was in the courtroom?

The Witness: I think I could.

The Court: Take a look at the men in the front row then.

The Witness: I would say he is the blonde gentleman, the first man here in the dark blue suit.

X-Q. That is the gentleman? A. I would say he was the one.

The Court: May the record show he is Robert Quirk.

X-Q. He gave you his name? [119] A. Yes, sir. He had me make them out.

X-Q. He asked you to make them out? A. That is right.

X-Q. To Robert Quirk, is that correct? A. That is correct.

X-Q. There is no question about that? A. No, sir.

Mr. Toltz: That is all, sir.

Mr. Lewald: May those articles be marked for identification?

The Court: Yes.

[Large pipe and valve marked Government's Exhibit C for Identification; small pipe and valve marked Government's Exhibit D for Identificatoin.]

Mr. Lewald: Mr. Radofsky.

HENRY RADOFSKY, Sworn

Direct-Examination by Mr. Lewald

Q. Your name, sir? A. Henry Radofsky.

Q. Your address? A. 222 Wilson Street, Haverhill.

Q. What is your employment? A. At present I am unemployed.

Q. In 1953 were you employed, sir? [120] A. I was, sir.

Q. By whom were you employed? A. Maynard Building Supply.

Mr. Thompson: What?

The Witness: The Maynard Building Supply.

Q. In what capacity were you employed, sir? A. I was treasurer and yard manager.

Q. I show you these several pieces of paper and ask you if you can identify them. A. I can.

Q. Will you look through them all? A. Yes.

Q. What are they? A Sales slips.

Q. Sales slips of the Maynard Supply Company? A. The Maynard Building Supply.

Q. And they were made by whom, sir? A. They were all made out by me.

Q. They represent sales made? A. That's right.

Q. Is it your duty to make those, if you make the sale? A. That's right.

Q. They were kept in the regular course of business? A. Yes, sir, that's right.

Q. Whom did you sell these articles to that are contained on [121] those slips? A. Mr. Robert Quirk.

Q. Do you see him in court, sir? A. I do, sir.

Q. Will you point him out? A. The gentleman in the blue suit.

Mr. Lewald: Stand up, Mr. Quirk.

[The defendant Robert Quirk stands up.]

Q. Is that the gentleman? A. That is Mr. Quirk as I know him.

Q. When did you make these sales? A. There were two sales made in October, two in November, two in December, all in 1953.

Q. Would you step down, if you will, sir? A. Yes, sir.

Q. I ask you if you can identify any of these objects as

being articles contained in those sales slips? A. I don't see anything there we could have sold him. I sold him sheathing. I don't know whether that is the sheathing I sold him or not. I couldn't tell.

Q. Similar to that? A. Similar.

Q. The same type? Would you have the name on what type of sheathing it is? A. The type? We called it Built Rite.

[122] Q. Built Rite sheathing? A. Yes, sir.

Q. What was the size sheathing you sold him? A. 2' x 8'sheets, 25 32'' thick.

Q. I show you this photograph marked Government's Exhibit 5-O and call your attention to the light panel on the right-hand side of the photograph. A. Yes, sir.

Q. I ask you what it says. A. Built Rite sheathing.

Q. Is that panel similar in size to what you sold Mr. Quirk on the date you testified? A. I believe so, yes.

Mr. Lewald: I now offer these sales slips.

The Clerk: Government's Exhibits 9-A, B, C, D, E and F.

[Six sales slips of Maynard Building Supply Company, Inc. marked Government's Exhibits 9-A through 9-F, respectively.]

Mr. Lewald: I have no further questions of the witness.

Cross-Examination by Mr. Toltz

X-Q. Mr. Witness, Robert Quirk bought a lot of building supplies from you? A. That's right.

[123] X-Q. Prior to this and after this? A. Yes.

X-Q. He was fixing his own home?

Mr. Lewald: I pray your Honor's judgment.

Mr. Toltz: If he knows.

The Court: Well, let's not suggest. Ask him.

X-Q. Do you know whether he was building his own

home at the time? A. No. I knew he was building his home before then.

X-Q. He bought materials from you at the time? A. That's right.

X-Q. Do you want to say that that material you identified is the material you sold to Robert Quirk? A. No. It is similar to it.

X-Q. You wouldn't say it is? A. No, I wouldn't. I don't believe anybody could.

X-Q. It is sold in different places? A. Well, several wholesalers carry it.

X-Q. So that someone else could buy it somewhere else? A. Yes.

Mr. Toltz: That is all.

Mr. Lewald: No further questions, sir, Mr. Wicko.

STANLEY J. WICKO, Sworn

Direct-Examination by Mr. Lewald

[124] Q. What is your name, sir? A. Stanley J. Wicko.

Q. Your address? A. My present address is 26 Main Street, Maynard, Mass.

Q. Your occupation? A. I am employed by Maynard Building Supply.

Q. In 1953, in the Fall of 1953 by whom were you employed? A. Maynard Building Supply.

Q. In the course of your employment did you have occasion to make any deliveries to any of the defendants here? A. Yes, sir, I did.

Q. What did you deliver and to whom? A. Lumber and building materials to the Quirk farm.

Q. To whom did you make delivery? A. To Bob Quirk or to his brother, who would meet me there and tell me where to leave it.

Q. Do you see the people in court to whom you made delivery? A. I do.

Q. Would you point them out, if you will? A. Bob, Robert and his brother.

Q. Robert Quirk is the man in the blue suit? A. Yes. And his brother is on his left.

Q. Where on the farm did you make delivery to them? A. Through the main gate and to the left of the main cow barn.

[125] Q. Did you deliver anything else to them that you recall besides lumber? A. Lumber and building materials.

Q. I show you Government's Exhibit 9-E and ask you if you can recognize it. A. I do, 2 x 4's and asbestos board.

Q. Was that a C.O.D. delivery? Did you get paid there? A. It was paid at the office. It was paid by check at the office

Q. And was that a part of the things you delivered? A. It is.

Q. I show you Government's Exhibit 9-A. It is Invoice No. 2757. Could you tell whether or not you delivered the articles? A. I did.

Q. What are they, sir? A. 48 pieces of 2 x 8's 25/32/ Built Rite sheathing.

Q. Could you tell how payment was made on that? A. Part by check and part by cash.

Q. To whom was the cash paid? A. Myself.

Q. Where? A. At the premises.

Q. By whom? A. By Bob Quirk.

[126] Q. Do you recall where you dropped the Built Rite sheathing? A. To the left of the cow barn.

Q. Were you aware of Mr. Quirk's private dwelling or Mr. Robert Quirk's private dwelling on the premises? A. Yes.

Q. Where in relation to the cow barn would he live? A. He lives facing the cow barn to the right in the next house lot.

Q. How far away from the cow barn would that be?

A. Oh, about 150 yards, his personal dwelling.

Q. You delivered the stuff there? A. No.

Mr. Lewald: I have no further questions.

Cross-Examination by Mr. Toltz

X-Q. You say the goods were paid for both by cash and by check? A. Yes.

X-Q. Did you know Bob Quirk? A. Yes, I knew him for sometime, quite a number of years.

X-Q. He did business with your firm prior to October of 1953? A. He did.

X-Q. He bought building supplies? A. He did.

X-Q. He bought similar goods as were delivered by you on this particular occasion? A. I can't recall whether he bought similar goods.

[127] X-Q. Would you say he did not? A. No.

X-Q. When he came to your place and purchased goods did he ever tell you to make out the bills to anybody other then himself? A. This bill was made out by Mr. Radofsky.

X-Q. To Bob Quirk, is that right? A. Yes. He made them out to Bob Quirk. All these slips were made out by Mr. Radofsky and I delivered the goods.

X-Q. They are all made out to either Bob Quirk or to Mr. Robert Quirk or Mr. R. Quirk, is that correct? A. That is correct.

X-Q. No other names appear? A. No.

X-Q. Your deliveries, sir, were made in the day time? A. In the day time.

X-Q. Did anyone ever tell you to hide your deliveries when you came there? A. Never.

Mr. Toltz: That is all, sir.

Mr. Lewald: I have one further question.

Redirect-Examination by Mr. Lewald

Q. Sir, some time after you made this last delivery in

question, did you have occasion to go back to the Quirk farm? A. I did.

Q. Who accompanied you when you went back? [128] A. Mr. Skelley.

Q. Of the Alcohol Tax Unit? A. Yes.

Q. I show you Government's Exhibit 5-F and ask you whether or not you entered that building with Mr. Skelley? A. I did.

Q. Inside that building did you make some inspection of the materials in its construction?

Mr. Toltz: Can we have the date when he came back?

The Court: What is the date, as far as you know it? Do you know the date?

Q. Sir, what is the date? What is the approximate date or dates, to the best of your memory, when you went back to the farm with Mr. Skelley? A. I believe it was some time in March.

Q. Do you have any idea of when in March?

The Court: March of last year?

Q. March of what year? A. 1954.

The Court: That is close enough.

Q. You made some inspection, did you, sir, of the inside of the building contained or pictured in Government's Exhibit 5-F? A. Yes, sir.

Q. Inside the building did you see materials similar to what you [129] had delivered to Mr. Quirk on the prior occasions? A. Yes, sir.

Q. Can you identify what you saw there that is similar to what you had delivered there at the cow barn on a prior occasion? A. The light asbestos Built Rite sheathing is similar to what I had left on his premises.

Q. Are there any other dealers in the area, sir, if you know, or were there at that time who dealt in Built Rite sheathing? A. No. I don't know offhand. That could be picked up from any distributor, two or three distrib-

utors in Boston, by any lumber dealer.

Mr. Lewald: I don't believe I have any further questions.

Recross-Examination by Mr. Toltz

X-Q. You took a paper out of your pocket a moment ago, did you? A. Yes.

X-Q. From your inside pocket you took out a paper and looked at it. Were you refreshing your recollection with that paper? A. Yes, sir. I wanted to make sure.

X-Q. Who made out that paper? A. Mr. Skelley.

X-Q. Who is Mr. Skelley? A. A Federal man.

X-Q. A Federal man made out a paper and then gave it to you, is [130] that it A. He made out a copy of my testimony.

X-Q. Let me see that paper, will you? A. Yes. [handing a paper to Mr. Toltz].

X-Q. When did you get this paper? A. Today.

X-Q. Today. When did you give this statement? A. March of 1954.

X-Q. Where did you give it? A At the office of the M. ynard Building Supply.

X-Q. From that day to this day you didn't see the paper you have there? A. No, sir.

X-Q. On March 30th, 1954, a statement was taken from you relative to deliveries at the Quirk farm, is that correct? A. That's correct, sir.

X-Q. In it you said that on November 2nd, 1953, "I received a sum of $19 from Robert Quirk in payment for two pieces of 14' x 2' lumber and two pieces of 20' x 2' lumber". Which bill is that? A. Right here [indicating].

X-Q. Is that your signature marked Paid? A. That is right.

X-Q. And Robert Quirk paid you for that? A. Yes.

[131] X-Q. $19? A. $19.

X-Q. That was for what? A. 2 x 12, 2 20s and 2 14s.

The Court: We will adjourn here until tomorrow morning at 10.

[Whereupon the trial was then recessed to June 12, 1957, at 10 a.m.]

[132] SECOND DAY

Court Room No. 1,
Federal Building, Boston
June 12, 1957

Mr. Lewald: Mr. Wicko, resume the stand. The witness was being cross examined yesterday when we recessed.

STANLEY J. WICKO, Resumed

Cross-Examination by Mr. Toltz, Continued

X-Q. Mr. Witness, at the time that you appeared on the premises of the Quirks with Mr. Skelley, sometime, I believe, in March of 1954, did you go into any of the other buildings on the premises? A. No, I did not.

X-Q. The only one that you went into is the one where there was some contraband; is that correct? A. That is true.

X-Q. And do you remember what time of the day you were there? A. I believe it was in the afternoon.

X-Q. When had Mr. Skelley first talked to you about this Quirk farm and the deliveries there? A. Some time, I believe, in March of 1954, February or March of 1954.

X-Q. And at that time did he tell you about a raid on the premises? A. I believe so.

X-Q. And did he tell you, at that time, of different types of material that were on the property? A. He didn't tell me about them. He asked me where he had some [133] slips from Gilfoy Distributing and asked if we had sold that material to him and could I identify it if I went up there.

X-Q. Did you tell him you had sold some of this material to Mr. Quirk? A. Through our office it was sold to Mr. Quirk.

X-Q. I asked you, sir, did you tell him you sold some of the material to Mr. Quirk? A. I did.

X-Q. Did you sell any of the material to Mr. Quirk? A. I did.

X-Q. Which of the material? Which of those materials did you sell to Mr. Quirk? [Handing.] A. This I know definitely I sold to him, even though the slip is made out through the office manager.

X-Q. Didn't you tell the Court and jury yesterday all of those slips were made out by the manager and were sold by the manager to Mr. Quirk? A. I don't recall saying that the manager sold them all. Any one of the three of us at the office could sell a purchase and the office manager would make out the slip.

X-Q. Tell me what is there on that slip? Will you take that out again? A. 2 by 12, two 20's and 2 14's.

X-Q. What is there about this slip that refreshes your recollection that you were the one that sold it to him? [134] A. Because we went out into the yard to look over the material.

X-Q. You remember that? A. I do.

X-Q. Do you remember the day of the week that was? A. No.

X-Q. Do you remember what time it was? A. No.

X-Q. Do you remember who was with Mr. Quirk when he was there? A. No.

X-Q. Do you make out slips yourself when you sell anything? A. Sometimes I do.

X-Q. You didn't make this slip out, did you, sir? A. No.

Mr. Toltz: That's all.

Mr. Lewald: I have no further questions, Mr. Witness.

The Court: Step down.

Mr. Lewald: Mr. Arciszewski.

JOSEPH ARCISZEWSKI, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Joseph Arciszewski.

Q. Will you keep your voice up? A. Joseph Arciszewski.

Q. Where do you live, sir? A. 236 Main Street, South Acton.

[135]Q. And your employment, sir? A. Yes, I do.

Q. Will you repeat your employment? A. Yes, I do work at the Maynard Building Supply Company.

Q. Were you working there in October of 1953? A. Yes, I think I did. I couldn't be positive.

Q. How long had you been working there? A. Since the place was opened.

Q. When was it opened? A. 1948.

Q. I show you this piece of paper, sir, and ask you if you can identify it. A. Well, yes, that come out of our yard.

Q. Can you identify the handwriting? A. Yes.

Q. Whose handwriting is it? A. The manager. Yes. This is the copy of the slip. It was the manager's writing.

Q. And at that time what position did you hold in this Maynard Building Supply Company? A. President.

Q. You were the president? A. That's right.

Q. You kept these records, did you not? A. I did.

[136] Q. And they are records kept in the ordinary course of business? A. That's right.

Mr. Lewald: I now offer this.

[Document from Maynard Building Supply Company marked Government's Exhibit No. 10.]

Q. Now, sir, do you recall the day that that merchandise was sold, to whom it was sold? A. Yes, I do, sold to Robert Quirk.

Q. Do you know Robert Quirk? A. Yes, I do.

Q. Could you point him out here in court? A. The gentlemen sitting right here on the first row, with a blue suit on.

Q. First one on our left? A. First one on the left.

Mr. Lewald: I have no further questions.

Cross-Examination by Mr. Tolte

X-Q. You have known Robert Quirk a long time, sir? A. I think I know Robert Quirk, the family, since they moved into Sudbury.

X-Q. That is about how many years? A. I couldn't recall exactly how many years.

X-Q. It was at least from 1948 when you went into business? A. I couldn't recall exactly, but I do remember him coming in and trading with us for quite a while.

X-Q. And he bought different materials for a house? [137] A. Yes, that's right.

X-Q. As a matter of fact, this material that he bought is used in homes, isn't it? A. That's right. Every home got to use it if the home is ready for plaster.

X-Q. You know Robert Quirk was building a house? A. He did a lot of repair of houses, roofing and shingles.

X-Q. Bought all that from you? A. That's right. I wouldn't say he bought everything from us, but he bought quite a bit from us.

X-Q. And all of these materials used in the home? A. I have been selling him stuff last year.

X-Q. Did he buy from you after this date of October, 1953? A. He bought some stuff off us last year.

The Court: Is this in the nature of a commercial? [Laughter.]

Mr. Lewald: The man comes into court; he might as well advertise himself.

The Court: All at our expense. [Laughter.]

Mr. Lewald: Then I have no further questions. You are excused, sir.

FREDERICK PAIGE, Sworn

Direct Examination by Mr. Lewald.

Q. Your name, please? A. Frederick Paige.

Q. Your address? [138] A. 44 Paige Road, Weston.

Q. Your occupation? A. Treasurer of Paige Brothers.

Q. What business are you in, sir? A. Fuel oil.

Q. How long have you been in the fuel oil business? A. 21 years this past February.

Q. Do you know the defendant Robert Quirk? A. Yes.

Q. In the fall of 1953, did you make any sales to him? A. Yes.

Q. What did you sell to him, sir? A. Gasoline, and also tanks.

Q. What type of tanks did you sell to him? A. Two 275's.

Q. Two 275s? A. Right.

Q. What type of a tank is a 275? A. Fuel oil tank, 14 gauge.

Q. Why do you call it 275? A. It is used for fuel oil, home tank.

Q. Is that its capacity? A. That's right. That's what they call it.

Q. Do you recall when in 1953, exactly, you sold him these tanks? [139] A. December.

Mr. Toltz: December of what year, sir?

The Witness: 1953.

Q. I show you Government's Exhibit 5-Z and ask you to look at it. A. [Examining.]

Q. Are the tanks in that picture identical with the tanks you sold to Mr. Quirk? A. Well, they are 275 gallon tanks. The tanks I sold were reconditioned. I can't tell.

The Court: "Identical" might be offensive.

Mr. Lewald: Yes, sir.

Q. Are they similar in nature to the tanks? A. Yes, the 275 gallon tanks, yes, sir.

Q. Did you ever deliver oil to Mr. Quirk? A. Yes, I delivered to, not Robert Quirk, but the Quirk family.

Q. What part of the premises did you make deliveries to? A. To the mother's home. I assume it was the mother's home. It was the big farm.

Q. The big farm house? A. Right.

Q. Did you make deliveries anywhere else on the premises? A. No, sir.

Q. Did you deliver to Robert Quirk? A. No, sir.

[140] Q. Were you aware where his house was? A. Yes.

Mr. Lewald: I have no further questions.

The Court: Step down.

THOMAS A. JOYCE, Sworn

Direct Examination by Mr. Lewald

Q. Your name, sir? A. Thomas A. Joyce.

Q. And your address, sir? A. 71 Kensington Street, Newtonville.

Q. We can't hear you, sir. A. 71 Kensington Street, Newtonville.

Q. I still didn't get it. A. 71 Kensington Street, Newtonville.

The Court: Would you mind stepping a little closer to the microphone? We would like to hear you.

The Witness: My address, 71 Kensington Street, Newtonville.

Q. In 1953 by whom were you employed? A. By Robert Quirk.

Q. By whom were you employed? A. Watertown Electric Supply Company.

The Court: That isn't the answer you gave before. Didn't you say Robert Quirk before?

The Witness: I thought he asked me by who was I [141] approached.

The Court: Will you state your question again?

Mr. Lewald: I will, sir.

Q. By whom were you employed in 1953? A. Watertown Electric Supply Company.

Q. And in what capacity were you there employed? A. Purchasing agent.

Q. During the fall of 1953 did you see any of the defendants here sitting in court? A. Yes.

Q. And on what occasion did you see them, and will you name them? A. Robert Quirk. He came into my place of business.

Q. Approximately what time did he come in? A. I don't recall what time of the day it was.

Q. What time in the fall of 1953 was it? A. I can't just remember just the time.

The Court: What is your best memory?

The Witness: Well, it seems as though it would be along in October, but I am not positive of that.

The Court: You don't have to be positive. State your best recollection.

Mr. Lewald: Excuse me a moment. I am trying to find the exhibit.

[A brief pause.]

[142] Q. I show you Government's Exhibits 7-A, B, C, and D. I ask you, sir, whether or not you can identify each of those slips. A. Those are all slips made out by my Company. Actually they were written up by one of our countermen, Mr. Arthur Mullen.

Q. And are they slips kept in the usual course of business? A. Yes.

Q. When do you recall Mr. Quirk coming into your store? What is your best memory as to when he came into

the store in the fall of 1953? A. He came in on this occasion asking me about some underground cable—

The Court: When, is the question.

The Witness: In October, around the middle of November—of October.

Q. Middle of October of 1953, and you had some conversation with him then? A. Yes.

Q. Could you give us the conversation? A. At that time he wanted to run an underground from a house to a building which was on his premises. And he asked me what size wire he should be using. At that time I told him the wire that I thought would be the size he should use, which happened to be a No. 8 conductor.

Q. Did he later purchase that from your store? A. Yes, he did.

[143] Q. Do you recall on what day he purchased that? A. That would be several days—say two or three days after he came into the place of business, which would be around the middle of October.

Q. Did you have to order this wire? A. Yes.

Q. Now, how many times in October of 1953 did Mr. Quirk come into your store, to your knowledge? A. I believe I only saw him on the two occasions, one when I had my conversation and I believe the other, I was there when he took the wire out.

Q. Was he accompanied by anybody on these trips to your store? A. On one occasion at least he was accompanied by his brother, Gerald.

Q. And do you know his brother Gerald? A. I did know him then. I don't know whether he has changed. It is quite a few years.

Q. Will you look and see if you can identify him here? A. I believe he is sitting alongside of Robert.

Q. With the short haircut? A. Yes.

Mr. Lewald: I have no further questions.

Cross-Examination by Mr. Toltz

X-Q. Mr. Witness, did Bob Quirk's sister work for your firm? A. She did.

[144] X-Q. And you knew Bob Quirk? A. Yes.

X-Q. Did he tell you to make out bills to anybody but himself at any time? A. I don't believe so.

X-Q. And he paid for the material that he bought? A. Yes.

X-Q. The sale of that type of wiring is done often at your place? A. Yes.

X-Q. Nothing unusual about it? A. No.

X-Q. And he asked you what type would be best to run underground? A. Yes.

X-Q. And that was to his mother's home? A. That I don't know. He just said it was at the farm.

X-Q. Out at the farm? A. Yes.

Mr. Toltz: Thank you very much.

Mr. Lewald: I have no further questions, Mr. Joyce.

MORRIS BLACK, Sworn

Direct Examination by Mr. Lewald

Q. May I have your name, sir? A. Morris Black.

Q. And your address? A. 130 Fairway Road, Brookline.

Q. In the fall of 1953 and the beginning of 1954, by whom were [145] you employed? A. Waltham Supply Company.

Q. What did you do there, sir? A. I was the manager.

Q. And the Waltham Supply Company is what? What does it do? A. Sells plumbing and heating supplies and electrical and hardware.

Q. I show you these invoices and ask you if you can identify them. A. I can identify two of them. They are written by me.

Q. Will you say that again, sir? A. I say, I can identify two of them; they have been written by myself.

Q. And they bear the numbers—? Which two? A. These two.

Q. Invoice numbers what? A. 7329 and 2106.

Q. The remaining piece of paper, can you identify it? A. I can identify the piece of paper, yes.

Q. What is it? A. Do you want me to state the items?

Q. No, just tell me what it is. A. It is one of the invoices that was used at the Waltham Supply Company.

Q. Was it a record kept in the usual course of business there? [146] A. Yes, it was.

Q. Were these records kept under your supervision when you were there? A. Yes.

Mr. Lewald: I now offer these.

[Waltham Supply Company invoices marked Government's Exhibits Nos. 11-A, 11-B, and 11-C.]

Q. I show you Government's Exhibit No. 11-A. Will you identify it as to the items contained thereon? A. In what respect? What does it say on the slip?

Q. Yes, sir. A. 4 by 4 copper float, 1-inch rod, triple seal ball, set of tank wires, two flashlights, four batteries.

Q. That is the line you personally did not make out A. That's right.

Q. I will show you Government's Exhibit 11-B. A. I wrote that one. That is a Spartan stone base shower stall.

Q. To whom did you sell that, sir? A. I do not recollect.

Q. What does the record indicate? A. It is made out to Quirk, but who the individual is, I do not remember.

Q. Did you later see that item after it left your store? A. Yes, I did.

[147] Q. When did you see it? A. I do not remember the exact date, but Mr. Shelley drove me up there and we went into the house and I saw the shower stall installed.

Q. What is your best memory as to the time you again saw it? A. I don't exactly know.

Q. Was it a year after it was sold, six months? A. I would say about a year after I sold it.

Q. Do you recall where in particular you saw it? A. It seems to me I saw it in a closet.

Q. A closet where, sir? A. In the house.

Q. And where was the house located? A. There was a small house alongside the main house as you drive into the driveway.

Q. Passing that, would you now look at Government's Exhibit 11-C? Will you tell me what the items are? A. 125 feet of 2-inch plastic pipe, two 2-inch plastic adapters, two clamps, and nine lengths of 2-inch black pipe.

Q. And do you recall to whom you sold those articles? A. I'm sorry, I don't recollect that, either.

Q. Do you recall seeing those at some later time? A. I believe I saw the 2-inch pipe laying around the yard. I don't know whether it is the pipe I sold him, but it was similar to it.

[148] The Court: Will you just answer the question? Don't try to be so explanatory.

The Witness: I'm sorry, your Honor.

Q. I show you Government's Exhibit 5-F and ask you if you can identify this building? A. I believe that was the house.

Q. That was the house what, sir? A. That the shower sta.' was installed in.

Q. And I show you Government's Exhibit No. 2 and ask you if you can identify it, along with Government's Exhibit—

The Court: Will you speak out loudly?

Mr. Lewald: I'm sorry.

A. I believe this was the house.

The Court: Can the jury hear that?

Mr. Smith: We can't back here.

A. [Continued] I believe that this was the house, right here.

Mr. Lewald: Will you show that to the jury and the defendants' counsel?

Mr. Toltz: Exhibit number what?

Mr. Lewald: Government's Exhibit No. 5-E. I have no further questions.

Cross Examination by Mr. Toltz

X-Q. Mr. Witness, I call your attention to Exhibit 5-E that the Government showed you a few minutes ago, and you say you saw the shower in that house? [149] A. I believe that is the house.

X-Q. And that was an apartment, wasn't it, that you saw it in? A. I believe it was.

X-Q. Is that correct? And you noticed that there were other houses on this land? A. That's right, there were.

Mr. Toltz: That's all.

Mr. Lewald: I have no further questions.

The Court: Step down.

[Brief pause.]

RALPH W. JORDAN, Sworn

Direct Examination by Mr. Lewald

Q. Your name, sir? A. Ralph W. Jordan.

Q. And your address? A. 325 Larchmont Avenue, Waltham.

The Court: Closer to the microphone: it won't bite you.

The Witness: 325 Larchmont Avenue, Waltham.

Q. In 1953, by whom were you employed? A. Waltham Supply Company.

Q. In what capacity, sir? What did you do? A. Truck driver.

Q. I show you Government's Exhibits 11-B and 11-C, and ask you if you can identify those. [150] A. I can identify the one with the shower stall.

Q. That is Government's Exhibit No. 11-B, and Government's Exhibit 11-C, sir? A. No, I don't recognize that.

Q. In relation to Government's Exhibit 11-B, did you make a delivery of that shower stall to someone? A. Yes, I did.

Q. To whom? A. To Quirk Farm, Sudbury.

Q. Did you deliver it to anybody on the farm? A. Yes, a lady in the house came out and told me where to leave it.

Q. Did you see anybody else on the farm? A. I don't believe I did that day.

Q. On some other day did you deliver some 2-inch black pipe there? A. Yes, sir, I did.

Q. To whom did you deliver that? A. I am not sure who received it.

Q. Do you see him in court here today? A. No, I don't, sir.

Mr. Lewald: I have no further questions.

Cross Examination by Mr. Toltz

X-Q. You delivered many shower stalls, didn't you, sir? A. Beg your pardon, sir?

X-Q. You delivered many shower stalls? [151]

A. Yes, sir.

X-Q. During that period. And the one that you delivered, you delivered to a woman on the Quirk property; is that correct, sir? A. That's right.

X-Q. Anything unusual about that shower stall? A. No, sir.

Mr. Toltz: That's all.

Mr. Lewald: I have no further questions.

RAYMOND H. NEWCOMB, Sworn

Direct Examination by Mr. Lewald

Q. Your name, sir? A. Raymond H. Newcomb.

Q. And your address? A. 3 Sawin Street, Arlington.

Q. And your employment, sir? A. Employed by the Boston Edison Company.

Q. Did you bring with you certain records today? A. Yes, sir.

Q. And those records contain meter readings from a particular meter? A. Yes, sir.

Q. These are the records? A. Yes, sir.

[Mr. Lewald hands papers to Mr. Toltz.]

Mr. Toltz: No objection.

[152] Q. Sir, what is the number of the meter that those figures are a record of? A. 677158.

Q. And where is that meter located? A. In the basement.

Q. Of what? A. Of Robert D. Quirk's home, off Pole 57/24 on Mossman Road, Sudbury.

Q. Is there an address on that, as to the number? A. Yes, identified by Pole 57/24.

Q. And could you read us the amount of electricity used for the month of August, 1953? A. 546 kilowatts.

Q. In September? A. 610.

Q. October? A. 510.

Q. November A. 560.

Q. And December? A. 1,402.

Q. January? A. 700.

Q. And did you have one for February? A. Yes, sir.

[153] Q. What is that? A. 2,124

Q. And March? A. 1,092.

Mr. Lewald: I have no further questions.

Cross Examination by Mr. Toltz

X-Q. Will you read on from there, Mr. Witness, for the next month after February?

The Court: He read March.

Mr. Toltz: Pardon me.

X-Q. After March; April. A. 1,190.

X-Q. May? A. 1,572.

X-Q. And that is 1954; is that correct? A. That's right.

X-Q. So that in May of 1954 there was 1,500-odd units used as against 600 in August of 1953; is that correct? A. Approximately, yes, sir.

X-Q. Had you been on the premises at any time? A. No, sir.

X-Q. Did you know that the Quirks had installed electricity for milking cows? A. No, sir.

X-Q. Some time in December? [154] A. No, sir.

X-Q. Did you know that all of their units in the cow barn—

Mr. Lewald: I pray your Honor's judgment unless he is going to offer evidence that this is so.

Mr. Toltz: I intend to offer evidence.

The Court: On that representation I will allow it.

Mr. Toltz: I do intend to offer that.

X-Q. Do you know that there were some 65 cows being milked by electricity from December on, of 1953? A. No, sir, I don't know anything about it.

X-Q. Would you know how much—

Mr. Lewald: I pray your Honor's judgment to this line of questioning. He said he wasn't at the farm so he couldn't possibly know any of these things.

The Court: He will ask if he knew the cows' names.

Mr. Toltz: I was going to ask him, Cow No. 6, if he remembered the name. He kind of got ahead of me.

Mr. Thompson: I would like to know what kind of cows they were.

X-Q. Do you know anything about these cooling machines run by electricity for cows? A. No, sir.

Mr. Toltz: That's all.

Mr. Lewald: I have no further questions.

The Court: I am not sure what counsel meant by [155] cooling machines for cows. I have been trying to get air conditioning here for a long time.

Mr. Smith: Dahl in the Herald had a cartoon showing an electric fan for cows, your Honor.

[Mr. Lewald hands a paper to Mr. Toltz.]

Mr. Lewald: Counsel can agree.

Mr. Toltz: Wait until recess and I will look at it.

Mr. Lewald: We can send it to you. I now offer this.

[Papers relating to electricity consumption marked Government's Exhibit No. 12.]

MARION E. SEWALL, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Marion E. Sewall.

Q. Your address? A. 10 Newton Drive, Maynard.

Q. Your occupation? A. I am a clerk at the Edison Company.

Mr. Smith: We can't hear.

The Witness: I say, I am a clerk at the Edison Company.

Q. What Edison division? A. In Maynard.

Q. I show you Government's Exhibit No. 12 and ask you to look through the enclosures and see if you can recognize it. A. Some of them have my initials.

[156] Q. And which ones have your initials? A. The one dated April 23, 1954.

Q. And that one represents what? What is that one? A. The amount, or what?

Q. No, what is that piece of paper? A. It is a receipt.

Q. For what? A. For electrical service.

Q. That is the first one you came to? A. Yes.

Q. It is April of 1954? A. That is the one on top.

Q. All right. A. There is one dated March 2, 1954. That has my initials.

Q. Will you look through the rest of them, please? A. And one dated December 28, 1953, has my initials, and one dated October 23, 1953, was written up in hand by me.

Q. All right. Now, that receipt indicates a payment, does it not? A. Yes, it does.

Q. Who made payment on these that bear your initials, if you know? A. Well, I can't be absolutely sure. Somebody paid them but—

Q. Who paid them—

The Court: Don't tell us if you are not sure.

[157] Q. If you know. A. I don't know who paid them.

Q. You don't know who paid any of them? A. No, I can't say for sure.

Q. Do you know the defendant, Robert Quirk? A. I know who he is.

Q. I ask you if you would look at this statement, if you will. A. [Examining.] Yes, I have seen it.

Q. Does that refresh your memory as to who paid it? A. Well, he has been in there a good many times, but I can't say the date that he was there.

Q. Well, did he pay any of these—

Mr. Toltz: No; I object.

The Court: Not that. Let her testify as to who he is.

Q. Who is Robert Quirk? A. The fellow right there in the blue suit.

Q. On any occasion did he come in to your place—

The Court: Let's stick to these bills and ask her if he paid any of those, and, if so, which ones.

Q. Did he pay any of these bills that you have here, that you have receipts for? A. I can't say for sure.

Q. Well, did he pay any of them or didn't he?

Mr. Toltz: I object.

[158] The Court: If you don't know, say so.

The Witness: I don't know.

The Court: If you do know, say so.

Q. Do you recall talking to special investigator Arthur Skelley?

Mr. Toltz: I object, your Honor.

The Court: I will allow that much.

Q. On July 22 of 1954? A. Yes, I do.

Q. Do you recall giving him a statement at that time? A. I suppose that is what you call it.

Q. I show you the back of this photostat and ask you if you can identify the signature on the back? A. Yes. It is mine.

Q. Does that refresh your memory as to any of the prior questions? A. Well, I took the money.

The Court: Dear lady, the question that was asked of you is, does that piece of paper refresh your memory. If it doesn't, say so, and if it does, say so. Does it refresh your memory? I am not asking you to read what the paper says. Does it refresh your memory?

The Witness: I remember the occasion, of course.

The Court: You remember what occasion?

The Witness: When I talked to Mr. Skelley.

[159] The Court: Does that refresh your memory as to who paid —

The Witness: No, I can't say who paid it.

The Court: All right.

Mr. Lewald: Excuse me just a minute. [Brief pause.]

Q. How long have you known the defendant, Robert Quirk?

Mr. Toltz: I am going to object.

The Court: There is no harm in knowing him for any length of time, is there?

Mr. Toltz: All right.

A. I have known who he was for quite a long time, four or five years, maybe.

Q. How long prior to November of 1953? A. I couldn't say. I don't know.

The Court: What is the purpose of this line of questioning?

Mr. Lewald: No purpose. I have no further questions.

Mr. Toltz: No purpose, no questions.

ALFRED GIANNOTTI, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Alfred Giannotti.

Q. And your address, sir? A. 65 Kendall Street, North Quincy.

Q. By whom are you employed? [160] A. Wharf Forging & Welding Company.

Q. How long have you been working for them? A. Ten years.

Q. In September of 1953 do you recall working on any particular type job? A. Yes.

Q. What were you doing at that time? A. We were making some tanks.

Q. Do you recall what kind of tanks you were making, the general description of them? A. They were just round tanks.

Q. Were you making them for any particular individual, if you know? A. Yes.

Q. Did that individual come down on occasion to the shop? A. Yes.

Q. Do you recall when he came down, to the best of your memory? A. Well, not every day.

Q. Well, how many times did you see him? A. About three times I had seen him.

Q. I show you Government's Exhibit No. 6 marked for Identification and ask you whether or not you can identify that picture? A. Yes.

Q. Who is that a picture of?

[161] Mr. Smith: Object.

The Court: We are not interested in that. Identify the defendant. The defendant is on trial, not the picture.

Mr. Lewald: May it please the Court, I was going to ask him if this was the man, and I will tie it up later.

The Court: I think it would be fairer to the defendants to tie it up first. See if he can identify the man.

Mr. Lewald: May I have the answer, that he can identify the picture?

The Court: He can identify it? That can stand but that is as far as you can go.

Q. Sir, will you come down with me? A. [Complying.]

Q. Will you look here in the first row and see if you can identify that man?

Mr. Smith: Let the witness testify.

The Court: May the record show he pointed to the defendant—what is his name?

Mr. Smith: I haven't seen him do anything yet.

Mr. Lewald: Will you stand up Mr. Goldstein?

[The defendant rises.]

Q. Is this the man you are pointing out? A. Yes. [Returning to the witness stand.]

Q. Will you tell us how long you worked on these articles, to the best of your memory? [162] A. About three days.

The Court: I don't think he understood your question.

Q. How long did you work on these articles, these tanks? A. About three days.

Mr. Lewald: I have no further questions.

Cross Examination by Mr. Smith

X-Q. Were you in the court room here yesterday? A. No, I was not.

X-Q. Were you in the Federal Building at all here yesterday? A. No, I was not.

X-Q. What time did you get in the Federal Building this morning? A. About 9:30.

X-Q. Did you have any conversation with any agent of the United States government this morning before taking the witness stand? A. Well, I was in the office.

X-Q. In what office? A. Downstairs.

X-Q. United States Attorney's office? A. Yes.

X-Q. Did you have a conversation with the Assistant United States Attorney here? A. Not a long one, no.

X-Q. Not a what? A. A long one.

X-Q. Did you have any conversation? [163] A. Yes.

X-Q. Did you have a conversation with any of the agents of the Alcohol Tax Unit? A. No.

X-Q. Wasn't this gentleman present at the time of the talk that you had [indicating]? A. He was present but I did not talk to him.

X-Q. So there were just three of you present at this conversation; is that correct? A. Yes.

X-Q. And at that time was there a discussion as to what your testimony was going to be here this morning? A. No.

X-Q. Did you discuss the identification of a defendant in this case? A. Yes.

X-Q. And weren't you told you were going to testify to that this morning? A. Yes.

X-Q. Well, then, there was a discussion as to what your testimony was going to be; isn't that right? A. Yes.

X-Q. And were you shown a picture this morning? A. No.

X-Q. When was the first time you ever saw the man you

now identify to be Goldstein? [164] A. When he first came into the shop.

X-Q. And when was that? What date? A. Well, I don't know offhand what date it is.

X-Q. Approximately what date, to the best of your memory A. It was in 1953. I'll say September, I think.

X-Q. And do you say it is September because somebody suggested it might be the month of September? A. No.

X-Q. Or do you have a memory of it? A. I don't remember offhand.

X-Q. All right, then, you don't remember. Do you remember what month it was that you worked on these tanks? A. No, I don't.

X-Q. You don't remember that? A. No. I do not.

X-Q. How long had you been working for Wharf Forging & Welding Company? A. Ten years.

X-Q. So you started in working there—are you working there now? A. Yes.

X-Q. You started working there around 1947; is that correct? A. Yes.

X-Q. Did you have any conversations, you, personally, have any conversations with the man who came in there that you now [165] identify to be Goldstein? A. No.

X-Q. Never did. Did you ever hear any conversations between Goldstein and your employer? A. No.

X-Q. What is the physical setup of Wharf Forging & Welding Company? Is there an office where your employer, Mr. Giovanni, conducts his business? A. No, there is no office.

X-Q. Just one large floor, is it? A. That's right.

X-Q. And your observations of the man you say now is Mr. Goldstein was while he was talking to Mr. Giovanni; is that correct?

Mr. Lewald: I pray your Honor's judgment.

The Court: I will allow that.

X-Q. Well, that is so, isn't it? A. I didn't hear what you said.

X-Q. Your observations of the man whom you now identify as Goldstein were made while he was talking to Mr. Giovanni; isn't that right? A. Yes.

X-Q. And did you stop your work in order to look at the man talking to Mr. Giovanni? A. Yes.

[166] X-Q. You did. And did you keep observing him while—all the time he was in there talking? A. No.

X-Q. For how long a period of time did you stop your work to watch the man who was talking to Mr. Giovanni? A. Oh, I just turned around to see who it was.

X-Q. You just turned around. O.K. And that would be for a fleeting moment, wouldn't it? Isn't that fair? A. Yes.

X-Q. Sure. You were concerned with doing your work in there; isn't that right? A. Yes.

X-Q. And you weren't particularly concerned to observe the man who was talking to Mr. Giovanni except as a matter of curiosity; isn't that so? A. Yes.

X-Q. And the time you spent in looking was just turning your head for a fleeting moment; is that a fair statement? A. Yes.

X-Q. Can you describe how the man was dressed that day? A. He had a sport shirt on and a sport jacket.

X-Q. And whether or not he was wearing any coat, topcoat or overcoat? A. No. He did not have one on.

X-Q. After that first observation for a fleeting moment, when [167] was the next time you say you saw the man whom you now identify to be Goldstein? A. About three days later.

X-Q. And had you finished your work on these so-called tanks? A. Not completely, no.

X-Q. And again, at that time, when the man whom you now say is Goldstein came on to the premises, you just

turned and glanced at him for a fleeting moment; is that a fair statement? A. Yes.

X-Q. That is, you didn't stop to study the man or to make a careful observation? A. No.

Mr. Lewald: I pray your Honor's judgment.

Mr. Smith: He has answered and he says No.

The Court: I will allow it.

X-Q. And then at some later time did somebody come out and question you with respect to a man who might have come in to order some tanks? Did somebody from the Federal Government come in to question you? A. Yes.

X-Q. How long after those incidents where you turned your head for a fleeting moment and observed some man talking to your employer, how long after that was it that some Federal agent or agents came out to interview you? A. About a year later, I think it was.

[168] X-Q. And had you ever seen that man whom you now identify as Goldstein, had you ever seen him again after the job with the tanks was completed to the time that the Federal agent or agents came out to question you? A. No, I did not.

X-Q. In all fairness, was there a third time that you observed this man?

Mr. Lewald: I object to that.

The Court: I will allow it.

Mr. Lewald: "In all fairness"?

Mr. Smith: All right; I will withdraw the question.

X-Q. And you were interrogated by the agents at that time, were you? A. Yes.

X-Q. And this was about a year later.

Mr. Smith: May we take the morning recess at this moment, your Honor?

The Court: Yes, we may.

[Brief recess.]

X-Q. Now, Mr. Witness, before the recess you testi-

fied you hadn't seen that man; that is, you hadn't seen the man whom you now identify as Goldstein up to the time that the agents came to talk to you; is that correct? A. That's right.

X-Q. That was about a year after these round tanks that you [169] worked on had been finished; is that right? A. That's right.

X-Q. And they were round tanks that you worked on? A. Two round ones.

X-Q. After you talked to the agents when was the next time that you saw the man whom you now identify as Goldstein? When was the next time? A. When he showed me his picture.

X-Q. When the agent— A. When the agent showed me the picture.

The Court: That wasn't seeing the man; that was seeing the picture.

The Witness: Well, I haven't seen the man himself.

Mr. Smith: I move to strike the answer, if your Honor please.

The Court: All right.

X-Q. When did you actually see the man again, if at all? A. I never did after that.

X-Q. You never did? A. No.

X-Q. Never saw the man again after that; is that correct? A. That's right.

X-Q. And I think you said you can't recall what month it was that you worked on these two round tanks? A. No, I don't recall that.

[170] Mr. Smith: That's all.

Redirect Examination by Mr. Lewald

Q. You never saw the man again after that until today? A. That's right.

Mr. Smith: Well, I object to that.

The Court: It is quite obvious he saw him today because he went right down and looked at him, pointed his finger at him.

Mr. Lewald: I have no further questions.

Recross Examination by Mr. Smith

X-Q. When was the first time today? Was it when you took the witness stand? When was the first time today you saw the man whom you now say is Goldstein? A. I seen him out in the hall when he was sitting down.

X-Q. Who were with him at the time? A. My friend.

X-Q. At any time were you with the Assistant United States Attorney when you saw Goldstein today? A. No.

X-Q. At any time were you with one of the agents? A. No.

X-Q. There is no doubt in your mind that you never saw the man other than on those two fleeting instances up until today; is that correct?

Mr. Lewald: I pray your Honor's judgment. That [171] wasn't his testimony.

The Court: I thought it was something to that general effect. Those weren't his words, "fleeting instances," those were Mr. Smith's, but I think he said he saw him twice around the place and today. Am I incorrect on that?

The Witness: That's right.

X-Q. And the two times you say you saw him were, I think you agreed, for a fleeting moment; isn't that correct? A. No, it wasn't for a fleeting moment. I have seen him in there five, ten, fifteen minutes.

X-Q. Didn't you testify— A. No, you said that.

X-Q. Wait a minute. Didn't you testify that you had been working on these round tanks? A. That's right.

X-Q. And that when a man came in and went to talk to your employer, you stopped work? A. Yes.

X-Q. And turned your head around to see who it was? A. Yes.

X-Q. And that was just a matter of curiosity; isn't that correct? A. Yes.

X-Q. Didn't you testify after turning around just to look at the man for a moment, you then went back to your work; isn't that [172] so? A. The first time.

X-Q. And that you then saw the man three days later? A. That's right.

X-Q. And that you were working at the time? A. That's right.

X-Q. And that you stopped your work to turn your head to see who it was that came in; is that correct? A. That's right.

X-Q. And that you then went right back to your work; is that correct? A. Yes.

X-Q. Didn't I ask you whether you had spent any time in studying the man or in looking at him? A. Well, just a force of habit, to look.

X-Q. Didn't I ask you whether it wasn't fair to say that all you did was to turn your head for a fleeting moment and didn't you say Yes? Isn't that what you testified to earlier? A. Yes.

Mr. Smith: That's all.

The Court: That's all. Step down.

LUDGER PETER DOUCETTE, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Ludger Peter Doucette.

[173] Q. Address? A. 11 Delano Park, Roslindale.

Q. Your place of employment? A. Wharf Forging & Welding.

Q. How long have you been employed there? A. 1949. Eight years.

Q. And still employed? A. Yes, sir.

Q. In the fall of 1953, sir, how many people were employed working with you in the shop? A. Five. I'm quite sure five.

Q. Could you tell us their names? A. Blacksmith's name was John; I forget his last name. And Giannotti and myself and Amerault and Joe Giovanni, the owner.

Q. Would you step down from the witness stand just for a minute, if you will? A. [Complying.]

Q. Come with me. Look at the people sitting here, and I ask you whether or not any of these people have ever been in your shop before? A. This man [indicating].

Mr. Smith: Wait a minute. Did you get that answer?

[The answer is read.]

Mr. Smith: No. "I think this man."

The Court: What did you say?

[174] The Witness: I think this man was in there.

Q. Would you point at the man you are talking about? A. This man here.

Q. This man here?

Mr. Lewald: May the record show he is pointing at Mr. Goldstein?

The Court: Yes.

[The witness resumes the witness stand.]

Q. Now, how many times did you see this man in your shop? A. Two or three times.

Q. Two or three times. And could you tell us about when it was that you saw him? A. Well, mostly in the morning.

Q. Well, what time of the year? A. I forgot. I don't know the time of the year.

Q. Were you doing any—

Mr. Smith: May I have that answer?

[The answer is read.]

Q. [Continued] Were you doing any special type of

work at that time? A. I work outside most of the time and when the work is done outside I do the work inside.

Q. When there is no more outside work? A. That's right.

Q. I show you Government's Exhibit No. 6 for Identification [175] and I ask you, sir, have you seen that picture before? A. I think I have.

Q. Will you look at tht back of it?

Mr. Smith: Well, I pray your Honor's judgment.

The Court: He said, "I think I have."

Mr. Smith: The question is now, "Will you look at the back of it?"

The Court: There is no harm in that. The jury hasn't seen it. I will allow the question.

A. [Examining.] I signed that.

Q. You have looked at the back. Does that refresh your memory as to whether or not you have seen that picture before, sir? A. I am quite sure I seen it before but I wouldn't swear to it.

Q. Is that your signature, sir, on the back? A. That is my signature on the back.

Mr. Smith: Wait a minute. I object.

The Court: I will allow that.

A. [Continued.] That is my signature, yes.

Q. Does your signature refresh your memory as to whether or not you have seen it? A. I must have seen it at that time.

Q. Does that refresh your memory now as to whether or not you were shown that? A. That was four years ago. [176] Q. I realize that, sir.

The Court: Can you remember now that you have seen this signature at the back of it?

The Witness: I did at that time.

The Court: What?

The Witness: I must have done it at that time because I signed it.

The Court: You signed it on the back. Did you see the front?

The Witness: On the front? I don't remember now.

Q. Did you look at the picture when you placed your signature on the back of it? That was the question of the Judge. A. No. I forgot now.

Q. Were you asked some questions about that picture?

Mr. Smith: I object.

The Court: No. I will not allow that.

Mr. Lewald: I didn't hear your ruling, sir.

The Court: I will sustain the objection.

Q. Can you now tell us what that picture is? Yes or no.

Mr. Smith: No. Objection.

The Court: He says he doesn't remember seeing it.

Mr. Lewald: I have no further questions.

Cross Examination by Mr. Smith

X-Q. You say, Mr. Doucett, that you don't recall what time of the year it was that you saw the man whom you think is sitting in this court room? [177] A. I do not.

Mr. Smith: Will you stand up, Mr. Goldstein?

[The defendant rises.]

X-Q. Will you look at the defendant Goldstein? [Brief pause.] When was the next time you saw the man whom you now say you think is Goldstein, after some period in 19—well, after sometime, you say, you think you saw him over at the Wharf Forging & Welding Company?

Mr. Lewald: I object to that question. I can't understand it and I am sure the witness can't.

Mr. Smith: If he can't, let him say so.

The Court: I presume you are trying to quote him

exactly, but he did mention seeing him in 1953. When was the next time you saw him?

The Witness: I didn't say what year I saw him. I don't know.

The Court: I am wrong in that respect. When was the first time you saw him?

The Witness: The first time I saw this man is when we were making tanks, square tanks.

The Court: Can you tell what year that was?

The Witness: No, sir.

The Court: How many times did you see him then?

The Witness: I saw him two or three different times for a few seconds.

The Court: After that two or three times, when [178] was the next time you saw him?

The Witness: I never saw him after.

The Court: Until today?

The Witness: Until today.

The Court: Did you see him today?

The Witness: I saw the man today in the hall.

Mr. Thompson: I didn't get that last?

[the answer is read.]

X-Q. Now, Mr. Doucette, during the few times you saw him, I think you said to the Court it was only for a few seconds; is that right? A. That's right.

X-Q. And you didn't pay any particular attention to him at that time, did you? A. No, sir.

X-Q. When you saw Goldstein out in the hall this morning, who were you with? A. With my friend.

X-Q. Who is your friend? A. Giannotti.

X-Q. The man who testified here before? A. That's right.

X-Q. Did Giannotti talk to you about Goldstein? A. I think I told him that looked like the man that was there.

X-Q. Did Giannotti talk to you about Goldstein? [179] A. No.

X-Q. Did you talk to Giannotti about Goldstein? A. I told him that looked—

X-Q. No, just did you? Did you talk to him? A. Yes, sir.

X-Q. Now, of course, Mr. Doucette, you don't say that you positively identify Goldstein as the man you saw sometime previous when you were working on tanks, do you?

Mr. Lewald: I object. That is argument.

The Court: I will allow it.

X-Q. Your answer is what? A. I wouldn't swear to it.

The Court: You have taken an oath to tell the truth; you know that?

The Witness: Yes.

The Court: And you said that was the man you saw?

Mr. Smith: Pardon me, your Honor. His testimony was, "I think this man here is the man."

The Court: Do you still think so?

The Witness: I kind of think so.

The Court: But you wouldn't swear to it?

The Witness: No, sir.

X-Q. You kind of think so; is that what you said just now? A. Yes.

X-Q. But yet you will not say, sir, that this positively is the man, will you? [180] A. No, sir.

X-Q. And the best you will say is that you kind of think so; is that correct? A. I kind of think so.

Mr. Smith: That's all. I move to strike his testimony, your Honor.

The Court: Oh, no.

Mr. Smith: My objection is noted.

Mr. Lewald: That's all.

WALTER D. CROWLEY, Recalled

Direct Examination by Mr. Lewald

Q. Your name, please? A. Walter D. Crowley.

Q. And you have testified before in this case, have you not? A. Yes, sir.

Q. When did you first go to the Quirk Farm in February of 1954? A. On February 24th.

Q. When you went on the premises, what did you do, sir? A. I searched the premises for evidence of raw materials that might be used.

Q. What did you find? A. I found a quantity of sugar in 100-pound bags.

The Court: How much in quantity; will you tell us?

The Witness: There were 60 bags of sugar.

Q. 60 bags of sugar in 100-pound bags? A. Yes, sir.

Q. Will you go on and tell us what else you found? A. There were two cartons which contained approximately 100 pounds of dry yeast apiece. There was another carton containing about 80 pounds of dry yeast. I found a torn paper bag in which was some lump ammonia. I found five pails painted black, which contained a product which I know to be a booster. I believe that's all the raw materials that I—.

Q. Did you find anything else on the premises besides raw [182] materials that you made a note of? A. Yes, I found an empty carton on which was stenciled the Mystic Supply Company.

Q. Will you describe the carton? A. It was rather a dirty carton.

Q. Well, the size of it, if you recall? A. It was about 3 feet square. I found a magazine, I believe it was Time, with an address on it, and I found the stub—

Q. What was the address, sir? A. R. Quirk, Mossman Road, Sudbury, and I found a check book stub.

Q. Now, sir, will you come down here? A. [Complying.]

Q. I ask you, will you point out, if you will, any of the articles there which are the articles you saw on the premises on the day you have testified to? A. This carton [indicating].

Q. That is the carton you described? A. Yes, and this pail.

Q. Pointing at this pail? A. Yes, sir.

Q. Was there anything attached to the pail at the time you found it? A. Yes, sir.

Q. Is that all, sir, that you saw? A. That is all.

[183] Q. Will you take the witness stand? A. [Complying.]

Q. You said there was something attached to that pail? A. Yes, sir.

Q. What was it, sir? A. It was a piece of wire to which was attached a small portion of a tag.

[Mr. Thompson examines the pail.]

The Court: Have you measured that, Mr. Thompson?

Mr. Lewald: Would you excuse me just a minute?

[Brief pause.]

Q. I show you that article on a piece of paper and ask you if you can identify it? A. Yes, sir, I can.

Q. What is it? A. That is the wire and the tag that was on that can that I pointed out.

Mr. Lewald: I now offer the wire and the tag and the can.

Mr. Toltz: May we see the tag?

Mr. Lewald: [handing]. Certainly.

Q. Now, sir—

Mr. Toltz: Will you wait just a second?

Mr. Lewald: Sure. [Brief pause.]

Mr. Toltz: I am going to object to this, if your [184] Honor please.

The Court: I will overrule your objection.

Mr. Toltz: There is some marking on the back of it and I want to know whether it was on there before or put on after?

Mr. Lewald: Would the Court like to see this?

The Court: Offer the tag and the wire. I will allow that. If there is any writing on the paper, the paper is not admissible.

Mr. Lewald: There is writing on the back of the tag, your Honor.

Mr. Toltz: That is why I objected to it.

The Court: Let me see it. Can't you send the object in without a tag? [Examining.] That goes in and that doesn't.

Mr. Thompson: Will your Honor read what is on the back of it?

The Court: Back of what?

Mr. Thompson: Back of the tag.

Mr. Toltz: The tag itself.

Mr. Thompson: That is why we objected to it.

[The Court examines the proffered exhibit.]

Mr. Lewald: May it be marked for identification only at this time?

The Court: Yes.

Mr. Lewald: And I have offered the pail.

The Court: All right.

[185] [Pail marked Government's Exhibit 13-A.]

[Tag marked Government's Exhibit 13-B.]

Q. After finding the pail and the tag, then what did you do? A. I turned the tag over to Special Investigator Arthur Skelley.

Q. What did you do with the pail? A. I segregated the pail so that it would be removed with other exhibits to the Government warehouse.

Q. When you were on the premises did you take any samples? A. Yes, sir.

Q. How many did you take? How many samples did you take? A. Five, I believe.

Q. And do you recall where you took them from? A. Yes.

Q. Where did you take them from? A. I took a sample of the dry yeast from an opened carton in what I called the storeroom. I took a second sample of dry yeast which was in the finished product room. I took a sample of the booster. I took a sample of, a lump of ammonia, and I took a sample of the oil that was in the cans.

Q. I show you these five bottles and ask you if you can now identify them? A. Yes, sir.

Q. What are they? A. This is a sample of the oil—

The Court: Are those the samples you just referred to?

[186] The Witness: Yes, sir.

The Court: All right. Don't repeat it.

Q. What did you do with them after you placed them in the containers? A. I delivered them to the chemist's office.

Mr. Lewald: I would like to mark these for identification only.

[Bottles containing samples marked Government's Exhibits No. 14-A, 14-B, 14-C, 14-D, 14-E, for Identification.

Mr. Lewald: I have no further questions of Mr. Crowley.

Cross Examination by Mr. Thompson

X-Q. What is your official position? A. I am a special investigator.

X-Q. Federal Government? A. The Alcohol and Tobacco Tax Division of the Internal Revenue Service.

X-Q. What day was it that you saw this can and these other things you mentioned? A. On February 24th, 1954.

X-Q. Was that the day after the raid? A. Yes, sir.

X-Q. Were you there at the time of the raid? A. No, sir.

X-Q. And did you know that Mr. Cataldo was,the officer who [187] executed the search warrant? A. Yes.

X-Q. And you are familiar, are you not, with the method of serving search warrants? A. Yes, sir.

X-Q. And you are ordered by the Court to seize certain things there, are you not? A. The person to whom the warrant is directed, yes, sir.

X-Q. In other words, if you have—if you are Mr. Cataldo and you have it directed to you that you are to seize the still and all things connected with it? A. Yes, sir.

X-Q. Used in the thing, and if the property is to be found there, to seize it, leaving a copy of the warrant and a receipt for property taken and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date. Do you know that is the ordinary rule? A. Yes, sir.

X-Q. And I assume that Mr. Cataldo served this, carried it out and he would make a list of the things?

The Court: He wasn't there when Mr. Cataldo was there.

Mr. Thompson: Just the procedure.

The Court: No, we are not going into that.

Mr. Thompson: Of course we can bring Mr. Cataldo in.

[188] X-Q. As a matter of fact, was anything taken away by Mr. Cataldo?

The Court: I will not allow you to ask the witness what Cataldo did. This man was not there.

Mr. Thompson: I understand.

The Court: I do, too. I hope you understand me.

X-Q. When you saw it the next day after the raid, did you see anything else besides these articles you have mentioned here? A. Yes, sir.

X-Q. Had anything, to your knowledge, been taken away from the place? A. Not to my knowledge.

X-Q. Did you write anything on the tags when you took them? A. I don't remember.

X-Q. Did you do anything to designate the tags that you took? I mean the articles you took and the tags you put on them. A. I may have marked the tag for identification. I don't recall at the moment.

X-Q. This little tag that was put in evidence, is that your writing, Robert Quirk, on the back of that tag? A. No, sir.

X-Q. Do you know whose writing it is? A. [Brief pause.]

The Court: Do you know or don't you?

The Witness: I don't know.

The Court: All right; say so.

Mr. Thompson: All right.

[189] Mr. Lewald: The tag doesn't contain the name of Robert Quirk.

The Court: I don't care what it contains. It is not in evidence yet. Don't tell the jury what it contains. The jury will disregard any remarks about what is upon the tag.

Mr. Thompson: I think that's all.

Mr. Lewald: I have no further questions.

Mr. Smith: Wait a minute.

[Brief pause.]

The Court: I wish counsel would be on their toes.

Mr. Smith: All I want to do is find out whether this is the agent that your Honor directed to bring in that report.

The Court: I don't know. Ask him.

Mr. Smith: Are you the agent who testified here yesterday and was directed to bring a report in here?

The Witness: No, sir.

The Court: Now you know.

Mr. Smith: That's all.

The Court: Step down.

ROBERT SMITH, Sworn

Direct Examination by Mr. Lewald

Q. Your name, sir? A. Robert Smith.

Q. And your address? A. 3 Paige Road, Marblehead.

[190] Q. By whom are you employed? A. Salem Oil and Grease Company.

Q. How long have you been employed with this concern? A. About ten years.

Q. In 1953 and in 1954, in what capacity were you employed at this concern? A. Secretary.

Q. And what does this concern do? A. Manufactures oil and greases for tanning leather.

Q. I show you this invoice with a tag and ask you if you can identify it? A. Yes.

Q. I show you this second invoice and ask you if you can identify it? A. Yes, I can.

Q. During 1953 and 1954, did your concern do business with the Fast Finishing Company? A. Yes, we did.

Q. And during that time did you sell them any sulfonated castor oil? A. Not directly to them, but through them to someone else.

Q. Were deliveries made to them from your concern, to the best of your memory? A. Yes, there were.

Q. Do you recall when the first delivery was and in what amount, [191] in 1953? A. Not precisely, no, sir.

Q. The second delivery? A. Not precisely.

Mr. Lewald: I now offer these invoices.

[Invoices of Salem Oil and Grease Company marked Government's Exhibits 15-A and 15-B.]

Mr. Thompson: I object to their offer.

The Court: Let me see them, what they are supposed to be.

Mr. Lewald: They are records—

The Court: I will admit them.

Mr. Thompson: Note my objection.

Q. I show you Government's Exhibits 15-A and 15-B. Are they records kept in the usual course of business by Salem Oil and Grease Company? A. Yes, they are.

Mr. Thompson: I couldn't hear your question or his answer.

Mr. Lewald: I asked him if they were records kept in the usual course of business and he said they were.

Q. Now, looking at Government's Exhibit 15-A, can you tell us, sir, what was shipped to the Barnstead Tanning Company? A. Half a drum of 186 oil.

Q. What is 186 oil? A. That is a sulfonated castor with a pine additive.

[192] Q. Looking at Government's Exhibit 15-B, what was shipped? A. 5 pails of sulfonated castor.

Q. That is without the pine? A. That's right.

The Court: What was the pine part of it?

Mr. Lewald: Without the pine oil added.

Q. Referring to Government's Exhibit 15-B, does that indicate where that was delivered, sir? A. Barnstead Tanning, but it was delivered to Fast Finishing.

Q. Where is Fast Finishing, sir, if you know? A. Peabody.

Q. I show you a pail marked Government's Exhibit No. 13-A and ask you if you can identify it. A. It is the same type which we use.

Q. Use in what? A. Small shipments.

Mr. Smith: I can't hear the witness.

Q. What capacity is that pail? A. I believe that is 6 gallons, or 6½.

Q. I show you this tag marked Government's Exhibit 13-B for Identification and ask you if you can identify it. A. It appears to be part of one of our tags.

[Objection by various counsel for the defendants.]

Q. Yes or no.

The Court: Can you identify it?

[193] The Witness: Yes.

The Court: Is that your name on there?

The Witness: That is my signature.

Q. What is it, sir? A. The signature?

Q. No. What is the exhibit? A. It is part of one of our shipping tags.

Mr. Lewald: I now offer it.

The Court: All right.

Mr. Thompson: What is it?

Mr. Lewald: Part of one of their shipping tags, Mr. Thompson.

[Government's Exhibit No. 13-B for Identification received in evidence.]

Q. Did you bring with you certain other records today of the Salem Grease Company? A. No, sir, I didn't. I was requested to, but they were here.

Q. Do you have any record of payment for either of the two invoices that are now before you? A. I have none, no, sir.

Q. Did you ever see any?

Mr. Thompson: Object.

Q. [Continued] Records of payment.

The Court: I will allow it.

A. Not specifically, no.

Mr. Lewald: I have no further questions.

[194] *Cross-Examination by Mr. Thompson*

X-Q. That pail that you have there is something which is common in the trade in tanning, is it not? A. I couldn't say, sir.

X-Q. Well, don't you have some other oils besides the castor oil which is used in tanning? A. Yes, we do.

X-Q. Don't you have finishes? A. No finishes, no, sir.

X-Q. Any coloring? A. No, sir.

X-Q. You mean to say you don't have any other product that you sell to tanners which is in receptacles like that? A. We have a great many oils, the bulk of which goes out in drums. Cans are used for small quantities and small buyers.

X-Q. I say small buyers use that kind of cans? A. That's right.

X-Q. You also send samples to them that way, don't you? A. Occasionally.

X-Q. To tanners? A. Yes.

X-Q. So that if we should go down to Peabody in any— do you go around to any of the tanners at all? A. Not myself, no, sir.

X-Q. Have you ever visited, during this period of time, some of [195] the tanners? A. Yes.

X-Q. Do you see many hundreds of those pails around? A. That's right.

X-Q. And it is a common pail used not only by your outfit but by every other oil outfit, is it not? A. We have a lining in this which a great many others don't have.

X-Q. But some have, don't they? A. Some have it, yes.

X-Q. In other words, there is really no distinction which makes that can identical with your business? A. That is correct.

X-Q. You are acquainted with the Barnstead Tanning Company? A. Not personally, no, sir.

X-Q. You mean you didn't know who the partners were in that? A. No, sir.

X-Q. Do you know the Fast Finishing Company? A. No, sir. I am mostly in the buying end of the business.

X-Q. And you don't know anything about— A. Very little about the selling

X-Q. And there isn't any doubt but what the produ which you did sell in that is used in the tanning industry? A. Would you re-phrase that, please?

X-Q. There isn't any doubt in your mind, is there, that the [196] material which you sold in those cans is a material which is used in the tanning industry? A. No, sir. That is a common product used in the industry.

X-Q. I say, it is a common product used in the industry? A. Relatively so, yes.

X-Q. And it has a tendency of smoothing out the coloring in the leather, does it not? A. I couldn't answer that, sir.

X-Q. You don't know anything about the purpose? Don't you buy this stuff? A. I buy the raw materials.

X-Q. You mean you buy the raw materials that make up this product? A. That's right.

X-Q. And the Salem Oil and Grease manufacture it, don't they? A. Yes, sir. The end purpose I am not familiar with.

X-Q. Do you mean to say you are secretary of the corporation— A. I am treasurer now, sir.

X-Q. And you do most of the buying? A. Yes, sir.

X-Q. And you want to tell us here you don't know what the purpose is in the trade, the particular purpose? A. That is correct, sir.

The Court: In what trade?

Mr. Thompson: In the tanning trade.

A. [Continued] We have well paid men to take care of that [197] end of it, sir.

X-Q. And if you buy it, you have to get advice from somebody, do you not? If your job is buying this material? A. I know the specifications of the materials required, yes, sir.

X-Q. And you know that you sell this to many of the tanners. Are there also other oil and grease concerns that sell to the tanning trade between Salem and Boston?

The Court: Why emphasize the tanning trade?

Mr. Thompson: Because this was sold to tanners, if your Honor please.

The Court: Did he say through them?

Mr. Thompson: My clients are tanners. I am more interested in that than anything else.

X-Q. Do you know the Fast Finishing Company is a branch of the tanning industry? A. That's correct.

X-Q. Do you know Prager's, too, in Peabody? A. It doesn't sound familiar, no.

X-Q. Do you know Mr. Bettencourt? A. No, sir.

X-Q. All you know is that in looking over your books and records you have a shipment to the Fast Finishing Company in Peabody of five of these cans; right? A. That's right, yes, sir.

[198] X-Q. And in the first part of September in 1953 you sold to the Barnstead Tanning Company in Barnstead, New Hampshire, half a drum; is that right? A. That's right, yes, sir.

X-Q. Is that difference in price, 20 cents and 28 cents here, due to the quantity that is bought? . Partially the quantity, and they had two different products. One is sulfonated castor and one is 186 oil

X-Q. What is 186 oil? A. It is a combination.

X-Q. Well, that is something you would use in the tanning business? A. That's right.

X-Q. No question about that? A. No, sir.

X-Q. Did you ever hear of it used for any other purpose? A. Yes, sir.

X-Q. What is the name of this oil? A. 186.

X-Q. 186? A. Yes, sir.

X-Q. And it just goes by a number? A. That's right.

X-Q. Isn't there any name to the oil? A. That is our—. [199] X-Q. What kind of oil is it? A. It is a castor base oil with a pine additive.

X-Q. Pine what? A. Pine oil.

X-Q. And that is got up specially for the tanning trade, is it not? A. Not entirely, no, sir.

X-Q. Who else do you sell it to? A. It is used—

X-Q. Pardon me; who else do you sell it to besides the tanners? A. A few private individuals.

X-Q. Do you know what the private individuals use it for? A. As a cleaning oil.

X-Q. You mean cleaning furniture? A. Machinery.

X-Q. So that this half a drum that you sold, back in September, the only usage you know of is in the tanning of leather and in cleaning machinery? A. Yes, sir.

X-Q. You don't know of any other uses it could be used for? A. I don't, no, sir. I am no chemist.

X-Q. All right. Would you say that you have, in the vicinity of 25 or 30 miles, 15 or 20 competitors who sell the same kind— A. No, sir.

X-Q. You haven't got that many? [200] A. No, sir.

X-Q. Have you got anybody else in Salem? A. I don't believe so, no, sir.

X-Q. What is that Seabord Chemical down here? A. That was in Beverly. In fact, that wasn't in business, I believe, at this time.

X-Q. Was Dodge in business? A. Yes, sir.

X-Q. He is in Salem? A. Yes, sir. He doesn't make this product.

X-Q. Who else makes—

The Court: You don't expect him to support his competitors, do you?

The Witness: He isn't a competitor. [Laughter.]

Mr. Thompson: I don't expect a Smith from Marblehead to give us anything more than what we could get, your Honor please.

X-Q. You have got eight or ten; they are in Everett, Saugus and Boston, here? A. I would say three or four, sir.

X-Q. And they use the same containers, too, don't they? A. I imagine; yes, sir.

Redirect Examination by Mr. Lewald

Q. They don't use the same tags, do they, sir? A. No, sir.

[201] *Recross Examination by Mr. Thompson*

X-Q. When did you write your name on that tag? A. That must have been back in the spring of 1954.

X-Q. In the spring of 1954? A. Yes, sir.

X-Q. You said it is a portion of one of your tags? A. Yes, sir.

X-Q. And somebody came down to your place of business and questioned you about it? A. They asked if we recognized it, if we knew it.

X-Q. By the way, you have a man named Tobin working for you? A. Yes.

X-Q. What is his job down there? A. He is a blendor, sulfonator.

X-Q. Is he also a brother of one of the Federal agents? A. Yes, sir.

X-Q. Another brother who is the postmaster down there? A. Yes, sir.

Mr. Thompson: That's all.

Mr. Lewald: I have no further questinos of this witness.

ROBERT KAPLAN, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Robert Kaplan.

Q. Your address, Mr. Kaplan? [202] A. 36 Surfside Road, Lynn.

Q. And your occupation? A. I am a leather salesman.

Q. For whom do you work? A. Pearse & Phelan Leather Company, Salem, Massachusetts.

Q. In 1953 by whom were you employed? A. Fast Finishing Company, Peabody, Massachusetts.

Q. I show you Government's Exhibit No. 15-B and ask you whether you can recognize it. A. No, sir I can't.

Q. Did you, sir, receive any shipments in 1953, for the Fast Finishing Company, from Salem Grease and Oil Company? A. Yes.

Q. Would you recall what those shipments were? A. That was five pails of some material. I did not know at the time what it was.

Q. What did you do with those five pails? A. I placed them in the bottom floor in a place designated for materials received for Barnstead Tanning Company.

Q. I show you this invoice, sir, and ask you if you can identify it? A. Yes, I can.

Q. And you placed those pails in a certain place? A. That's right.

Q. And do you recall on what particular day you did this? [203] A. I can't, no.

Q. Do you recall whether or not you paid for the pails? A. No, I wouldn't know that, either. I just received them.

Q. This invoice which you have seen before, sir, is that

an invoice that you have made out? A. No, I have not. I didn't make that invoice out. I just signed it.

Q. And that is your signature? A. Yes, sir.

Q. I now offer it.

[Invoice, Fast Finishing Company, marked Government's Exhibit No. 16.]

Q. Would you look at that Government's Exhibit No. 16 and see if that refreshes your memory as to when you received those pails? A. Well, I see a date on there but—

Q. Does it refresh your memory? A. No, it does not refresh my memory as to the exact day I received it. I can't remember the exact day.

Q. Can you remember the approximate—can we have your best approximate memory as to the day you received it? A. No, sir, I can't remember the exact time that I did receive it.

Q. Was it in 1956? A. No, it wasn't in 1956. I believe it was 1953.

Q. Would you be able to tell us the approximate month or the [204] month that you did receive it? A. I don't know. It might have been in the summertime, and then again I am not sure.

Q. What is the usual practice of your receiving shipments and signing for them, sir? A. Well, my usual practice, sir, is not to remember when I receive them—

Mr. Thompson: Object.

The Witness: What's that?

The Court: His usual practice is not to remember.

Mr. Thompson: I object, if your Honor please, if that is the expression of opinion.

The Court: No expression of opinion. That is what he said.

The Witness: I didn't finish, sir.

The Court: But you said what I said, didn't you?

The Witness: Yes, sir.

Mr. Thompson: I can't hear very well down here.

The Court: Do you want my Sonotone? [Laughter.]

Q. You signed you received this in good order, sir? A. Yes.

Q. You want to say now you don't have any recollection except as to the year as to when you received it in good order? A. That's correct.

Q. And this slip doesn't refresh your memory? [205] A. Yes, sir, I definitely remember receiving this slip from the truck driver and signing it.

Q. And this date is 2-19-54, is it not?

Mr. Thompson: I object. This is his witness.

The Court: That's all right. I will allow it. Answer the question.

The Witness: What is the question?

Q. That is the date on the slip? A. That is the date on the slip.

Q. And that doesn't refresh your memory as to when you received it? . No, sir, it does not.

Q. When you placed these particular pails, where you did place them, what time of the day was it? A. I think it was in the morning.

Q. When did you see them again? A. I don't think I saw them after that.

Q. After you placed them there? A. That's right, sir.

Q. And was it part of your duties there at Fast Finishing to go into this room and take care of this room where you placed it? A. No, sir.

Q. When did you next go in the room? A. Well, I probably was in that room many times during that same day and after that, but I had no particular reason to look over [206] to that part of the building.

Mr. Lewald: I have no further questions.

Mr. Thompson: No questions.

The Court: Step down.

LOUISE GRAY, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Louise Gray.

Q. And in 1953 and 1954, by whom were you employed? A. The Fast Finishing Company.

Q. Where are they located? A. 4 Union Street, Peabody.

Q. In what capacity were you there employed? A. Bookkeeper.

Q. What were your duties as bookkeeper? A. Well, I took care of all the books, the payroll, made out, just general bookkeeping. I had full charge of the office.

Q. Who were the officers of the Fast Finishing Company at that time? A. John Bulyga and Arthur Fedas.

Q. That is what, Fast Finishing Company? A. Right.

Q. Did you also keep books for another concern at the same time? A. Several.

Q. Well, would you name them? [207] A. Well, I did work for Quality Cleaners, Barnstead Tanning Company.

Q. On the Barnstead Tanning Company, who were the officers of it? A. John Bulyga and Frank Bettencourt.

Q. Do you now see any of these people in the first row among the defendants? A. Mr. Bettencourt.

Q. Will you point him out? A. The last man over there on my right.

Q. That is John Bettencourt? A. That is Frank Bettencourt.

Q. Was Frank Bettencourt employed by the Fast Finishing Company? A. No.

Q. I show you Government's Exhibit No. 16 and Government's Exhibit No. 15-B. I ask you if you can recognize those? A. This one I do not recognize, the first one. The second one, yes.

Q. And that represents a shipment received of what? A. It says oil, castor, from Salem Oil and Grease.

Q. How much and what quantity? A. Five pails of sulfonated castor.

Q. And it was delivered to— ? A. Fast Finishing.

Q. And?— [208] A. Barnstead Tanning.

Q. Do you recall the circumstances of how payment was made for that oil, and by whom? A. Yes.

Q. Would you tell us what they are? A. Well, it might be a little involved. It was my practice to keep books for both companies and the Barnstead Tanning, we met—I kept the books at home and maybe once a week or once every two weeks we would meet and make out checks for the incoming bills. Sometimes if a shipment came in for the Barnstead to the Fast Finishing we might pay for it with cash, one of the officers might, and then I might make out a check later when they would present the invoices to cover it.

Q. On this particular occasion what happened? A. This was paid for in cash.

Q. How was it paid and from whom did you get the money and where did you get the money? A. When I came in to work that morning there was money and a note on my desk that there was a shipment coming in from Salem Oil and Grease and I was to pay for it when it came in.

Q. Did you recognize the handwriting on the note? A. I don't recall.

Q. There was a note there that you were to pay for it? A. The money was there and the sum was there.

Q. Where did the money come from? [209] A. It was cash, and it was on my desk.

The Court: You don't know who the note came from?

The Witness: Well, I presume—

The Court: No. Do you know it?

The Witness: No, I do not know.

Q. Did you know at that time? A. Yes, at the time—

well, I won't say I know. I figured. That's all I can say.

Q. But now you do not know whose handwriting was on the note? A. No, unless I saw the note. I would recognize the handwriting.

The Court: How long have you been with these companies?

The Witness: I started in 1949; I worked for them through 1955.

The Court: And you don't recognize the handwriting on that note?

The Witness: Well, it was—why, yes, I believe I do. I don't remember, if you want my honest opinion. I am not trying to evade the issue.

The Court: What are you trying to do?

The Witness: Well, it was Mr. Bettencourt's handwriting.

The Court: We will take a recess until 2 o'clock.

[Luncheon recess.]

[210] AFTERNOON SESSION

Mr. Lewald: May we approach the bench, with the reporter?

The Court: Yes.

[Conference at the bench:

Mr. Lewald: In response to Mr. Smith's formal demand in open court for the statement of Thomas Nicholson, Special Investigator, who had testified previously, I am now presenting that statement, or a copy of that statement, which I have for Mr. Smith, for his inspection. [Handing.]]

LOUISE GRAY, Resumed

Direct Examination by Mr. Lewald, Continued

Q. Prior to recess you had told us you had received a note on the morning, I believe, of the 19th, did you not? A. I don't remember the date.

Q. From Mr.—did you say you recognized the handwriting on the note? A. Yes, Mr. Bettencourt's; Frank Bettencourt.

Q. The defendant, and what did the note say? A. I don't remember exactly what it said, the actual wording of it. It just said there was something coming in from Salem Oil and Grease and I was to pay for it, and here was the money for it.

Q. Did something come in from Salem Grease Company on the day, [211] or later the morning? A. Yes, later on that morning. The driver came in with a bill and gave it to me and said it was C.O.D. and was I going to pay for it, or words to that effect.

Q. I show you Government's Exhibit 15-A and ask you if you can recognize it, the smaller piece of paper. A. Not the smaller piece.

Q. You can recognize the larger one? I'm sorry, Government's Exhibit 15-B. A. Yes.

Q. Now will you look at the date on it? A. Yes.

Q. Does that now refresh your memory as to when you paid for this particular shipment? A. Well—yes.

Q. What date was that? A. February 19, 1954.

Q. The total cost of the shipment was what? A. $78.40.

Q. And do you recall how much money Mr. Bettencourt left for you? A. No, I do not, but it wasn't enough.

Q. It was less than that amount? A. Right.

Q. What did you then do when the driver came in with this bill, [212] which was more than the amount that had been allotted and left to you? A. I called Mr. Bettencourt,

told him the amount, and the bill was more than the money I had, and asked him if I should pay the difference.

Q. Where did you call him? A. At Prager Tanning.

Q. Did you make some note of the telephone exchange somewhere on that? A. Well, I may have because I looked up the number and then jotted it down.

Q. You had talked to Mr. Bettencourt previously over the phone? A. Not that—

Q. Previously? A. Sure.

Q. You knew who it was? A. Surely.

Q. You got hold of him at this other tanning company? A. Yes.

Q. What conversation did you have with him? A. Well, I said that the man was there to collect from the Salem Oil a Grease and I didn't have enough money and was I to put the money with it and pay the amount of the bill, and he said yes.

Q. So you took money from another source in the office? [213] A. Yes. I had cash on hand.

Q. That didn't belong to Mr. Bettencourt? A. No, it didn't belong to him.

Q. And you paid the bill? A. The total amount of the bill.

Q. Were you later reimbursed for your extra money that you had obtained for this difference? A. I was reimbursed, yes, the difference between what he gave me and the money that came from the safe.

Q. Did Mr. Bettencourt ever submit to you a voucher from the Barnstead Tanning Company representing this money? A. No.

Q. So as far as you were concerned, did you review the records, also, of the Barnstead Tanning Company, to see whether he did, at some subsequent time? A. Yes, I did.

Q. And did you see any record of his submitting a bill

for this money that he had paid? A. No, there wasn't any. There was never a voucher submitted for it.

Q. As far as the records reveal, he paid for this personally?

Mr. Thompson: Just a minute.

The Court: There was no record made, she said. Leave it that way.

Q. You did keep the books of the Barnstead Tanning Company? [214] A. Yes.

Q. When did you stop keeping the books? A. In 1955.

Q. Up to that time was there any record of Mr. Bettencourt submitting a voucher or another bill for repayment? A. No.

Q. Was it unusual for Mr. Bettencourt to pay for shipments—

Mr. Thompson: Object.

The Court: I will sustain the objection.

Mr. Lewald: Excuse me a minute. [Brief pause.] I have no further questions.

Cross Examination by Mr. Thompson

X-Q. Who were the other people interested in the Barnstead Tanning? A. John Bulyga and Mr. Bettencourt's brother.

X-Q. John Bulyga, who is the owner of the Fast Finishing; did you work for him? A. Yes.

X-Q. And did the Barnstead Leather Company have cash advances to either partner, on the books? A. No.

X-Q. I mean by that, did either one of the men in the firm, either one of them have any cash withdrawals at all from the Tanning Company? A. Only if they had expenses and they submitted a voucher for [215] it.

X-Q. Did they receive some cash advances to themselves, either for labor or services, or for anything else? A. I can't be sure, but I don't think so.

X-Q. Did you continue working for the Barnstead Tanning Company after they moved to Haverhill? A. No, I was working for them when they were still in New Hampshire.

X-Q. Did you know that afterwards they moved down to Haverhill? A. No, I did not.

Mr. Lewald: Thank you; I have no further questions.

The Court: Step down.

Mr. Lewald: You are excused.

JOHN BULYGA, Sworn

Direct Examination by Mr. Lewald

Q. Your name, sir? A. John Bulyga.

Q. Where do you live, sir? A. 3 Clement Avenue, Peabody, Massachusetts.

Q. And your occupation? A. Leather.

Q. What do you do with leather? A. I finish and retan it.

Q. In 1953 and in 1954 did you hold any office in any leather company? [216] A. Yes.

Q. What was the name of that company and what office did you hold? A. I was president of the Barnstead Tanning, and I was president of the Fast Finishing Company.

Q. Do you still hold those positions, sir? A. I do.

Q. Do you recall transporting five cans of sulfonated caster oil from the Fast Finishing Company to the Barnstead Tanning Company? A. Well, not particularly, no. I transport a lot of cans and chemicals and I couldn't just really remember that.

Q. In February of 1954 would you know whether or not you had any 186 oil on your premises of the Barnstead Finishing Company? A. I wouldn't know.

Q. You wouldn't know? Who would know? A. Frank Bettencourt.

Q. What are his duties at the corporation? A. He bought all the materials, all the tanning, all the dyes and the chemicals that went into the tanning.

Q. Were you authorized to write checks on the company, sir? A. If Frank—if Mr. Bettencourt was sick I was authorized to.

Q. If Mr. Bettencourt was sick? A. If he was sick.

Q. Do you recall ever transporting five pails of sulfonated [217] castor oil with Mr. Bettencourt? A. It is hard for me to remember.

Q. I asked if you recalled whether or not — A. If it was something I had to remember, maybe I would have.

Q. But you now have no memory of ever doing it; is that it? A. No.

Q. Sorry? A. No.

Mr. Lewald: I have no further questions.

Cross-Examination by Mr. Thompson

X-Q. Those cans, do you see any of those black cans with a bail on them? By the way, is this up in Barnstead Center, where the tannery was? A. Yes.

X-Q. Did you see any pails like that up there? A. I see hundreds of them.

X-Q. Different things come in them? A. That's right.

X-Q. Up at your plant? A. That's right.

Mr. Thompson: That's all.

Mr. Lewald: I have no further questions.

The Court: Step down.

JOHN BETTENCOURT, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? [218] A. John Bettencourt.

Q. And your address? A. White Oak Road, Barnstead, New Hampshire.

Q. And your occupation? A. Machinist.

Q. Do you hold any office in the company with which you work or formerly worked? A No, sir.

Q. I call your attention to Government's Exhibit 15-A and do you know what 186 oil is? A. No, sir.

Q. Do you know what sulfonated castor oil with pine is? A. With pine, yes.

Q. And what is it? A. Well, that's— The only way I can say, it smells pine; that's all.

Q. What do you use it for? A. For leather.

Q. Do you recall seeing any of that on the premises of the Barnstead Tanning Company in February of 1954? A. No, sir.

Q. You now say you don't? A. I don't know exactly the date it was, but when the agent went up there I took him through the factory to look for what he was looking for and we found that half a barrel.

[219] Q. You found half a barrel? A. Yes.

Q. What time was this? What time did the agent come up? A. Oh, I couldn't tell you. He was there four or five times.

Q. Did you ever see any plain sulfonated castor oil on the premises? A. I can't say because I don't know the difference. I don't know what it looks like.

Mr. Lewald: I have no further questions.

The Court: Any questions?

Cross-Examination by Mr. Thompson

X-Q. When did you get through with the Barnstead Leather? A. In 1955.

X-Q. Did you have some difficulty with your brother? A. No, they had it with me.

X-Q. He had it with you? A. Yes.

X-Q. You are not on good terms at the present time? A. Well, I am telling the truth.

Mr. Thompson: That's all right.

The Court: Step down. Not because you are telling the truth, but because you are through. [Laughter.]

RALPH S. GOODWIN, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Ralph S. Goodwin.

[220] Q. And your address, sir? A. 11 Strathford Road, Islington, Massachusetts.

Q. And your occupation? A. Clerk.

Q. In 1953 you worked where? A. At the Waltham Supply Company.

Q. I show you three invoices. Will you look at them and see if you can identify them? A. Yes, I do.

Q. Will you also, sir, look at Government's Exhibit 5-I, H, G, F, and E? A. [Examining.]

Q. Now, sir, in relation to these invoices you have looked at, what are they? A. Well, I would say they were, items, that—

Q. What are they? Did you compile them? A. I wrote them, yes, sir.

Q. And they are records of what? A. Merchandise sold to Quirk, or somebody representing him.

Q. On what dates? A. September 30, 1953, October 28, 1953, and December 22, 1953.

Q. Are those records kept in the usual course of busi

ness of Waltham Supply Company? A. I believe they are.

Q. And you made these? A. I wrote the original copy. [221] Q. These are the originals, aren't they? A. I believe they are; as far as I know.

Mr. Lewald: I offer them.

(Waltham Supply Company invoices marked Government's Exhibits Nos. 17-A, 17-B, and 17-C.)

Q. I ask you if you saw those articles, or some of those articles listed on those invoices at a later time after they left your store? A. I saw similar items, yes. Similar articles.

Q. You saw similar articles to those at a later time? A. Yes.

Q. Will you tell us when and where? A. I believe they were at the premises described in these pictures. I am not sure; it was quite a while ago.

Q. Where was it that you went? A. I went to Sudbury.

Q. Where in Sudbury did you go? A. I don't know. I am not familiar with Sudbury. I went to some farm, or the premises similar to those described in the pictures here.

Q. Do you recognize any of the defendants sitting there? A. Yes, sir, I do.

Q. Whom do you recognize? A. I know Bob Quirk.

Q. How long have you known Bob Quirk? A. In a business way, probably three or four years.

[222] Q. And you never knew where he lived? A. No, I didn't.

Q. Never had any idea? A. No.

Q. Never made any deliveries out to his house? A. I never did, no.

Q. Did you ever have any deliveries made to his house? A. I don't recall. As near as I can remember, the merchandise was picked up at the store where I worked.

Q. Do you have any idea where he lives? A. Only in Sudbury.

Q. Didn't you know you went to his house on that day? A. Yes, I did, with another party.

Q. What did you see there?

Mr. Toltz: Well, when?

Mr. Lewald: All right.

Q. When did you go there? A. I don't recall that, either.

Q. What is your best memory? A. I believe it was in 1954.

Q. And approximately what month? A. It was in the wintertime.

Q. What did you see? A. What did I see?

Q. Yes, sir. [223] A. I don't recall that, either.

Q. Will you look at those slips again [handing]? A. Yes. [Examining.]

Q. Did you see any of those articles on those slips, or identical articles with things on those slips on the premises? A. I don't recall. If I was presented with them right now, at the time I would be able to identify them.

Q. When you entered the premises, where did you go? A. Back to the store where I work.

Q. When you entered the premises, the farm, where did you go? A. I just walked around.

Q. Did you enter any buildings? A. I don't believe I did. I saw buildings.

Q. You didn't go inside of any buildings at all? A. I don't recall.

Q. Did you go near any buildings? A. I was close to buildings, yes.

Q. Can you describe what the building or buildings you were close to were? A. They were farm buildings, as near as I can recall.

Q. Can you give a better description of them? A. I don't beieve I can.

Q. I show you Government's Exhibit No. 5-E and ask you whether or not you can identify that building. A. No, I don't recall.

[224] Q. Never saw it before in your life? A. That identical building, no, I wouldn't swear to it.

Q. I show you Government's Exhibit No. 5-L. Did you ever see that building before? A. No, I didn't take particular notice.

Q. I show you Government's Exhibit No. 5-G. A. I can't recall.

Q. I show you Government's Exhibit No. 5-H. A. No, sir.

Q. I show you Government's Exhibit 5-I. A. That doesn't mean a thing to me.

Q. Do you recall going to the premises with a Federal agent? A. Yes, I do.

Q. Do you recall pointing out certain things? A. I believe I did.

Q. Do you recall now what is pointed out? A. No.

Q. Will you look at those slips and see if they refresh your memory? A. [Examining] There is a can of refractory cement here.

Q. Did you see that on the premises? A. I did. An empty can.

Q. Will you come down here, sir? A. [Complying.]

Q. I ask you whether or not you saw that can on the premises [225] [indicating]? A. That one or one similar to it, yes.

Q. Where did you see it? A. I believe it was in the basement of a building.

Q. Will you resume the stand? A. [Complying.]

Q. In the basement of a building? A. Yes.

Q. What type of building? A. Well, it was open. It was a cellar.

Q. The cellar of what type of building? A. It was an old building, that's all I know. I didn't take particular notice.

Q. Does it resemble any of those exhibits? A. I don't recognize it on the pictures, no.

Q. Where in the cellar of that old building was it? A. It was sitting on the floor.

Q. Were there cows in the building? A. No, there were not.

Q. I show you this piece of paper, sir, and ask you if you would read it to see if it refreshes your memory as to—. A. [Examining.]

Q. Does that refresh your memory as to what building it was? A. Well, the only thing I can say is it was a cellar of an old building.

[226] Q. What else did you see on the premises? A. There were two items mentioned here.

Q. What else did you see on the premises? A. What else did I see? Possibly two or three pieces of pipe laying around.

Q. What kind of pipe? A. It was a piece of plastic pipe.

Q. What size? A. I don't recall. It says here, 2-inch.

Mr. Toitz: No; I object.

The Court: Not what it says here. If it refreshes your memory, you can tell.

The Witness: I don't recall the size of the pipe.

Q. Do you have any memory whem you submitted that statement of what you saw on the premises? A. Right now?

Q. At the time you submitted the statement do you have a memory as to what you saw? A. Yes, I think I did.

Q. You want to leave it now you don't have any memory

of what you saw on the premises? A. I have a very faint recollection.

Q. What do you remember? A. That they took me out there to show me around to see if I could identify anything I had sold on the premises here and I [227] identified one here and there is another one mentioned on there, or two others mentioned on there that are not on here, I don't believe.

Mr. Lewald: I have no further questions.

Mr. Toltz: No questions.

JOHN J. TREBENDIS, Sworn

Direct Examination by Mr. Lewald

Q. The name, please? A. John J. Trebendis.

Q. And your address? A. 65 Nashoba Road, West Acton, Massachusetts.

Q. Now, sir, in 1953 and 1954 by whom were you employed? A. By the Maynard Supply Company.

Q. Are you still employed by them? A. Yes, sir.

Q. In what capacity were you employed by them? A. At that time, as a truck driver.

Q. Would you look at the first row of people sitting there, and I ask you if you recognize any of the people? A. The two Quirk boys.

Q. Would you identify them as to which? A. Now, I know one is Robert, but the other I don't know his name.

Q. You know he is a Quirk? A. I know he is a Quirk.

[228] Q. Did you have occasion to see them in 1953? A. Yes. When I say yes, I don't recall the year clearly, but I recall going there.

Q. And going there with what? A. 2-inch plastic pipe and 2-inch black steel pipe.

Q. Where were you taking that from? A. The Waltham Supply Company.

Q. Do you recall the circumstances under which you delivered it there? A. I was asked by the manager of the Waltham Supply. I wasn't told, I was asked if on the way home I would stop off and drop it off. It is on the way to Maynard, so I did.

Q. Then what happened when you arrived at the farm? A. I got there kind of late.

Mr. Toltz: I'm sorry to interrupt. Can we fix the time, the date and approximate date?

Q. Will you go on? A. On what question, sir?

Q. On mine. What happened when you were at the farm?

Mr. Toltz: I object. I asked if we could fix the time.

The Court: Ask him what time it was.

Q. What time was it? A. I would say in the middle of the week, possibly a Tuesday, Wednesday, or a Thursday.

Mr. Toltz: What month or what year?

[229] The Witness: It was in the Fall. I would say probably September or October. As to actually when it was, I don't—

Mr. Toltz: Of what year?

The Witness: I couldn't say, sir.

Q. How many deliveries of this nature did you make to them? A. Two. Possibly three. Two that I recall.

Q. Would you look over Government's Exhibit No. 17-A, 17-B and 17-C and Government's Exhibit No. 11-A? A. [Examining.] There's two that I possibly recognize. One, I am pretty sure.

Q. Do those exhibits help your memory as to when you made these deliveries? A. I only know that it was in the Fall, sir, the month I couldn't say.

Q. When did you first start driving a truck for Waltham? A. I didn't drive for Waltham; I drove for Maynard. Maynard is a branch of Waltham.

Q. Who were these deliveries for, Waltham or Maynard? A. Waltham.

Q. And what were the articles, again, that you delivered? A. I know on one load there was one coil of 2-inch plastic pipe. On that same load there was 2-inch black pipe. On the second load that I recall, 2-inch plastic and 2-inch black, one load may have been smaller than the other, but they contained [230] the same two items.

Q. Will you look at this piece of paper, sir [handing]? A. [Examining.]

Q. Look at the last set first. A. [Examining.] Yes

Q I ask you, does that refresh your memory as to when you made these deliveries? A Well, I see the date—

Mr. Toltz: No; I object.

Q. Does it refresh your memory? A. No, sir.

Q. Do you want to say now it doesn't refresh your memory? A. I recall some of these things.

Q. Does it refresh your memory as to dates? A. No, sir, it does not.

Q. Do you recall giving that statement? A. I do.

Q. Do you recall signing it? A. I do.

Q. Do you have a memory, at that time that you made those deliveries? A. It was fresher. At that time, I mean, there were certain things—

Q. My question is, did you then have a memory of the date? A. Yes.

[231] Mr. Lewald: I offer it.

Mr. Toltz: I object.

The Court: I will sustain the objection.

Mr. Lewald: May I come to the bench on that, your Honor?

The Court: Yes.

[Conference at the bench.]

[Further conference at the bench:

Mr. Lewald: I am offering this on the basis of

past memory recorded. The witness says he doesn't have any memory now but he did then, when he gave the statement.

The Court: No. I will not allow it.

Mr. Lewald: I can give you cases on it, your Honor.

The Court: What cases?

Mr. Lewald. On past recollection recorded, where the witness does not now have a memory but he did at a former time and wrote it down.

The Court: This is a statement given to the agents?

Mr. Lewald: But this was a statement which he signed.

The Court: I don't care. I will not admit it.]

[232] Q. For whom did you make these deliveries, sir? A. I made them for Waltham Supply.

Q. Who in particular? A. Again I will say I wasn't told. I was aksed, for one reason, that it was on my way home and I would save—

Mr. Toltz: I object.

The Court: He has already testified to this.

Mr. Lewald: Yes, but I would like it again for the record, if I might have it. I didn't get the name, if it please the Court.

Q. Who were you asked by to make these deliveries? A. Mr. Morris Black, or Moe Black.

Q. And where did you pick up the articles?

Mr. Toltz: Your Honor please, there was testimony to that.

The Court: I don't know if there was or not.

Mr. Toltz: Then I will withdraw my objection.

Q. Where did you pick up the articles? A. At Waltham Supply.

Q. And you were asked by Mr. Black on each occasion? A. Yes sir.

Q. And you picked them up at the same place on each occasion? A. At Waltham Supply, right.

Q. When you delivered them to the Quirk's farm did you have any conversation with the people there? [233] A. The first time was kind of late in the evening, between 5 and 6, it was just getting dusk—

Mr. Toltz: I object.

Q. Can we have the conversation?

The Court: He said, did you have a conversation?

The Witness: The first time, no. Very little, if any, at all.

Q. Did you have any at all, with anybody there?

Mr. Toltz: I object. Anybody on the place.

A. No.

Q. What did you do with the articles? A Both times I just—

Q. What did you do with the articles the first time?

Mr. Toltz: Let him finish.

The Witness: The same question?

Q. What did you do with this first delivery? A. I just left them on the ground in front of a barn, just threw them on the ground.

Q. Just threw them on the ground in front of a truck? A. In front of the barn.

Q. Can you describe what the barn looked like? A. No, other than it is an old barn. It is, well—without ever being there, I would say it would be a cow barn.

Q. On the second occasion did you have any conversation with anybody there, just yes or no? [234] A. No.

Q. On both times you had no conversation with anybody there? A. On the first time I had very little. Well—

Q. What was the conversation that you had? A. I tried to strike up a conversation. I couldn't get any.

Q. With whom? A. Both boys.

Q. Were both boys there? A. Yes.

Q. What did you say and what did they say to you? A. Well, the exact words I don't— It is, How's things, just trying to strike up a converstaion.

Q. And you had no conversation? A. No, Busy, and got something to do, and I mean there was no words spoken, I mean no—

The Court: Conversation without words?

The Witness: There was hardly anything at all said.

Q. To the best of your memory what was said? Were you told where to dump the stuff?

Mr. Toltz: I object.

The Court: I will allow it if he has exhausted his memory, what little he has.

Q. Were you told where to dump this load? A. They told me just to put it on the ground.

Q. Who told you that? [235] A. I don't recall.

Q. And you just tossed it off. Did anybody help you? A. Yes, they helped me.

Q. They both helped you? A. Yes. I won't say they both did. I don't remember that well.

Q. Did you have any conversation as to what the pipe would be used for? Would you look at that piece of paper and see if that refreshes your memory? A. [Examining.]

The Court: Are you ready?

The Witness: I am, sir.

Q. Does that refresh your memory as to the conversation you had? A. Yes.

Q. What conversation did you have? A. I asked them, while I was unloading, what they were going to do with the black pipe, or the pipe. They told me they were going to pump water from a brook.

Q. Who said that? A. I would say Gerald. From a brook down in the lower field or wherever it was located.

Q. Did you see the brook? A. No, I didn't, sir. So I mentioned to him that black pipe seemed foolish. Usually things pertaining to water, they would [236] use galvanized, or drinking water of any type. He says no, it was cheaper and they would get out of it quite a bit cheaper. That is why they used a black pipe.

Q. Did you have any more conversation with them at that time? A. I mentioned to him, one way or other, why they didn't get it at Maynard Supply, a little closer, and he said they had been passing through Waltham for one thing and another, and they stopped and ordered it there.

Q. Who said that? A. Gerald, I would say.

Q. Did you have any further conversation with any of them on that day? A. No, sir. I don't recall.

Q. And you say you went back there another day with another load of pipe? A. Yes.

Q. This was what kind of pipe? A. Same thing again. 2 inch black and 2 inch plastic.

Q. Did you have any conversation with either of them on that day? A. Well, no. On one occasion we had nothing at all. We unloaded the pipe and that was it. On the second occasion I asked what they were going to do with it.

Q. When you first entered the farm on either of these occasions did anybody say anything to you? [237] A. On the first occasion no one was around.

Q. On the second occasion, then? A. No.

Q. Did they tell you where to stop your truck? A. No, sir.

Q. Did they tell you where to unload it? A. I asked them where to unload it. It was heavy pipe, so if I could help by putting it some place, I would have, and they said no, on the ground is all right.

Q. These were the only two trips you made to that farm; is that true? A. Yes, that I remember clearly. At

one time I think I said I remember the third trip, but I don't recall of it at all now.

Q. How far apart were these trips, in days or weeks? A. I would say a week apart.

Mr. Lewald: Thank you.

The Witness: I am just guessing now. I am not positive.

Mr. Lewald: I have no further questions.

Cross-Examination by Mr. Toltz

X-Q. Mr. Witness, did either of the Quirk boys tell you to hide this material on the farm? A. No, sir.

X-Q. Did either one tell you to put it in back of any buildings, or anything? [238] A. No, sir.

X-Q. This was right out in the open, wasn't it? A. Right out in the open.

X-Q. And black pipe can be used for water, is that right, sir? A. Yes, it can. Yes.

X-Q. You were questioned by men from the Tax Unit Division? A. I beg your pardon?

X-Q. You were questioned by some agent from the Tax Unit Division? A. I was.

X-Q. Do you know his name? A. Well, I didn't when I came in. I would recognize him, but now I know his name.

X-Q. What is his name? A. Mr. Skelley.

X-Q. Did someone give you his name today? A. No, sir. I know it from the statement.

X-Q. Where did you get the statement? A. I believe it was on two occasions.

X-Q. Where? A. In Maynard, Massachusetts.

X-Q. At your home? A. At the store where I work.

X-Q. Both of them at the store? A. At one time in the store and one time aside of the store.

X-Q. How long were you with them on either occasion? A. Approximately an hour each time.

[239] X-Q. Standing outside the store for an hour? A. No, sir, in my car, sitting there.

X-Q. And the statement was being written while you were sitting in the car? A. Yes, sir.

X-Q. And you signed the statement in the car? A. Yes, sir. Excuse me, I'm sorry. On both occasions I signed it in front of a witness.

X-Q. Where? A. In the Maynard Supply Company.

X-Q. On the same day you gave him the statement? A. Yes.

X-Q. After sitting in a car for an hour? A. I would say it was about an hour we sat in there and talked.

X-Q. Do you know what part of the year that was, and what year? A. Other than it was the summertime, but the exact month, week or day, I can't recall, sir.

Mr. Toltz: Thank you.

Mr. Lewald: I have no further questions.

CLAYTON GIVNEY, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Clayton Givney.

Q. And your address? A. 3 Friend Street, Salem.

Q. And your occupation? [240] A. Truck driver.

Q. In 1954 you were employed by whom? A. Salem Oil and Grease.

Q. As a truck driver? A. That's right.

Q. I show you Government's Exhibit 15-B and ask you if you can identify it? A. This slip is like mine. I wrote that.

Q. The white slip? A. Yes.

Q. You signed the white slip? A. I made out the slip.

Q. And that slip represents what? A. It was made out for five pails of sulfonated castor.

Q. Delivered where, on what date? A. It was made out for Barnstead but delivered to Fast Finish.

Q. When? A. On February 19, 1954.

Mr. Lewald: I have no further questions. You are excused.

The Court: We will take a recess here.

[Brief recess.]

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[242] LYMAN G. JUDD, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Lyman G. Judd.

Q. And your address? A. 79 Harlow Street, Arlington.

Q. By whom are you now employed? A. The Alcohol and Tobacco Tax Division.

Q. In 1954 were you so employed? A. I was.

Q. Did you have occasion, in 1954, to go to the Quirk Farm premises in Sudbury? A. I did.

Q. Was this in the course of your duties? A. Yes, sir.

[243] Q. When did you first arrive there? A. At about 4.15 p.m. on the 23d day of February.

Q. You were with other officers? A. I was.

Q. How long did you remain there on that day? A. Until about 9 p.m.

Q. Who relieved you? A. At that time I left to go home, to go back again the following morning for guard duty.

Q. Who was there when you left? A. I don't recall the names of all of the investigators. There were quite a number at the time I left.

Q. Could you give us some? A. Investigator Cataldo, Watson, Piskadlo, Supervisor Fletcher. Those are the ones I recall presently.

Q. You left around 9 o'clock? A. That's right.

Q. And you returned when? A. 4 a.m. on the 24th day of February.

Q. When you returned, who was there? A. Investigators Watson and Piskadlo.

Q. Did anybody arrive after you did? A. Investigator Mazaka accompanied me.

Q. When you and Mazaka were there, were there any other Federal officers there at 4 a.m.? [244] A. Investigators Watson and Piskadlo. They left. We relieved them.

Q. On the 24th, what did you do in the premises? A. At the time, I was there for the purpose of guard duty and I looked around the premises, made sure that everything was there that had been turned over to me at the time we relieved Investigators Watson and Piskadlo, and during the morning of that day I assisted Special Investigator Nicholson in making some of the photographs, and I also took samples of the mash from the tanks on the main floor and from the finishing tank and the heads and tails tank.

Q. What did you do with those samples? A. I turned them over to Investigator Daly and Paone.

Q. From the time you were there on the 23d and went back on the 24th, had anything been changed on the premises? A. Not that I noticed.

Q. In taking these samples, did you take them in conjunction with some other officer? A. Yes, sir.

Q. How many did you take, in all; do you recall? A. I took samples from seven mash vats out of the ten that were on the floor. There were three empty. I took one sample from each of the full vats and a sample from the finishing tank of alcohol and one from the tank containing the heads and tails.

Q. What is the heads and tails tank? [245] A. That

is the tank that is used at the beginning of the run and at the end of the run.

Q. I ask you, if you would step down. Can you identify those bottles? A. Yes, sir.

Q. Would you look at each of them, if you will? A. Yes, sir.

Q. Do they bear your signature? A. Yes, sir.

Q. Do they represent the bottles that you put the samples in that you previously testified about? A. Yes, sir.

Mr. Lewald: I have no further questions.

Cross-Examination by Mr. Thompson

X-Q. What is this third tank you took samples out of, heads and tails? A. Yes, sir.

X-Q. There are heads and tails? A. That is the beginning of the—heads and tails is the beginning and the end of the run. In other words, that is the poorer quality of alcohol, at the beginning and at the end of the run.

X-Q. It had nothing to do with any pine oil? A. No, sir.

X-Q. Castor oil with pine odor? [246] A. No, sir.

Mr. Lewald: May these be marked for identification?

The Court: Yes.

Mr. Lewald: I have no further questions of this gentleman.

[Samples marked Government's Exhibits 18-A, 18-B, 18-C, 18-D, 18-E, 18-F, 18-G, 18-H, and 18-I.]

Cross-Examination by Mr. Toltz

X-Q. Mr. Judd, were you present on the 19th of February with Cataldo? A. No, sir.

X-Q. Were you present on the 20th of February? A. No, sir.

X-Q. The first time you went to the premises, then, was on what date? A. The 23rd.

X-Q. And that was the day that many of you agents came to this Quirk Farm? A. Yes, sir.

X-Q. Was it daylight when you arrived? A. It was.

X-Q. Can you remember how much daylight remained after you arrived? A. No, I don't recall exactly.

X-Q. You say you got there at 4.15? A. That's right, approximately.

[247] X-Q. And you remained until 9 o'clock? A. Yes, sir.

X-Q. Who else remained until 9 o'clock? Of the agents? A. As I recall it, all the agents who originally went on the premises at 4.15, with the exception of the Assistant Regional Commissioner Henneberry and Chief of Enforcement McCarthy, remained.

X-Q. Those are the only two that left? A. I took them home and I left for a short while, and returned.

X-Q. In other words, you didn't remain from 4.15 to 9 without being in the premises? A. No, sir, I was gone for a short time.

X-Q. What time did you first leave the premises? A. I don't recall exactly. Some time between 7 and 7.30, possibly.

X-Q. How far did you go? A. To Boston.

X-Q. And then came back? A. Yes, sir.

X-Q. Mr. Judd, when you went to the premises, from what direction did you enter? This is at 4.15 that afternoon. A. I entered from Mossman Road from the direction of the shrine. I don't know what the compass direction was.

X-Q. I wouldn't, either. Did you enter the yard of the Quirk Farm? [248] A. Yes, sir, I drove into the yard.

X-Q. In other words, you came in from the main road? A. Yes, sir.

X-Q. Right onto the premises? A. Yes, sir.

X-Q. And you were in an automobile? A. Yes, sir.

X-Q. How many were with you? A. Two.

X-Q. Who was driving? A. I was driving.

X-Q. How many cars came into the yard at that time? A. I believe there was one other besides myself.

X-Q. How did you enter the building in which the so-called still was in? A. I didn't enter that until some time after I had been on the premises.

X-Q. Where did you go after you entered on the premises? A. I stayed up at the dwelling house to see if anybody was there.

X-Q. And which dwelling house are we now talking about? A. The dwelling house as you first come in the main entrance from Mossman Road onto the Quirk Farm. In other words, that is the premises of Robert D. and Norma Quirk, I believe.

X-Q. This defendant here? [249] A. Yes, sir.

X-Q. His house? A. I believe so.

X-Q. When did you first enter the premises where this alleged still was? A. I was in there for a few minutes that same evening. I don't recall exactly when. Possibly half-past eight.

X-Q. That was the first time? A. Yes, sir.

X-Q. Did you get an opportunity to look over the premises, the Quirk premises, at that time? A. At that time? Not particularly.

X-Q. Did you see the cow barn? A. Yes, sir.

X-Q. Did you see cows in the barn? A. I didn't notice them at that time.

X-Q. Did you later notice cows in the barn? A. I did.

X-Q. Were you present when Robert Quirk and his brother came upon the property? A. I was.

X-Q. Where were you at that time? A. I was in the yard.

X-Q. And did you talk to them? A. No, sir.

[250] X-Q. Did anyone talk to them in your presence?

A. Do you mean while I could see them or while I was close to them?

X Q. Close to them. A. No, sir.

X Q. Did you hear any converstaion between any of the agents and Robert Quirk? A. I did not hear any.

X Q. Did you at any time look around the premises as to any entrances or exits, Mr. Judd? A. Yes, sir.

X Q. When was that? A. On the 24th and the 25th.

X Q. Do you know where the pond is that has been testified to? A. I know where there is a pond, yes, sir.

X Q. Would that be in back of the building in which this alleged still was? A. Yes, sir.

X Q. Was there any road between the pond and the building in which the alleged still was? A. Yes, sir.

X Q. A car could go on that road? A. Yes, sir.

X Q. Wide enough for a car? A. Yes, sir.

[251] X Q. Wide enough for a truck? A. Yes, sir.

X Q. Did you notice how far that road went? A. I didn't follow it to its end, no, sir.

X Q. Did it go beyond the pond? A. Yes, sir.

X Q. Did you at any time follow the road as to where it finally ended? A. No, sir.

X Q. But there was a road: that is right, isn't it? A. Yes.

X Q. Now as you entered the farm with your automobile, there was a big house to your left: is that correct, sir? A. Yes, sir.

X Q. And a cow barn to the right? A. That's right.

X Q. And this—well, call it a house, cottage, barn, or whatever you will, where the alleged still was is in further, down below to the right? A. That's correct.

X Q. And there was a house, a small house in back of the barn— A. Down by the pond, yes.

X Q. Is that correct, sir? A. Yes.

X Q. Did you learn who occupied that house? [252]

A. That house that I am speaking of down by the point was not a house to be occupied.

X-Q. Well, did you see another house that was occupied on the Quirk premises? A. There was a house to the right of these premises that we are speaking of, of the barns.

X-Q. In other words, there are two dwellings on the property; is that correct? A. I don't know whether the second house was on that particular property or not.

X-Q. Well, it was on the right as you enter the Quirk property, another dwelling? A. That's right.

X-Q. Is that correct, sir? A. Yes.

X-Q. And on your left was this big house; was there a road that swung to the left of the big house? A. Swung to the left of the big house?

X-Q. As you entered there was a big house on the left, is that right? A. That's right.

X-Q. The shrine was to the left of the big house as you entered; is that correct? A. Yes, sir.

X-Q. Now, as you continued into this yard, wasn't there a road [233] to the left, beyond the house? A. It ran between the house and the barn.

X-Q. That's right. Was there also a shed near that big house; is that what they call it? A. Corn shed or corn crib. Would you know what that is? A. Yes, I would know what it is.

X-Q. Do you remember that? A. By the house? No, I don't.

X-Q. I show you Government's Exhibit No. 6 for identification and this is an aerial photograph, I understand, of the right? A. Yes, sir.

X-Q. Was this the road that you came in when you entered the grounds? A. Yes, sir.

Mr. Tom: I will show this to the jury when I get the answer.

X-Q. And you came in between this barn and this house? A. Yes, sir.

X-Q. Isn't that a road over here to the left? A. It looks like it, yes, sir.

X-Q. And isn't that the road that went by this hut, this house that had the alleged still in it? A. It looks like it, yes, sir.

X-Q. And this is the barn? A. Yes, sir.

[254] X-Q. And this is the barn? A. Yes, sir.

X-Q. And this is where you saw cows at some time? A. Yes, sir, in this building here.

Mr. Toltz: May I point this out to the jury, if your Honor please? [To the jury] The witness says he entered on this road, came in here, that this cow barn, this is the big house, this is where the alleged still was and this was a road in back of the still that went by the pond and that he believes that this is a road turning to the left.

X-Q. Were you present when Robert Quirk was placed under arrest? A. I was in the vicinity.

X-Q. Do you remember who placed him under arrest? A. No, sir.

X-Q. Did you see Robert Quirk after he had entered the premises and talked to agents, go into the barn? A. I didn't see him go into the barn, no.

X-Q. Do you know when he was placed under arrest? A. No, sir.

X-Q. Do you know when he was taken from the premises? A. No, sir.

X-Q. Did you see him on the premises up to the time that you left on your first trip away from the Quirk Farm? A. Did I see him?

X-Q. Yes? [255] A. Yes.

X-Q. Was he at that time in custody, if you know? A. I don't know.

X-Q. Did you see him walking around the yard? A. Yes.

X-Q. Did you see his mother there? A. No.

X-Q. And I understand, then, at no time did you personally have any conversation with any of the Quirks; is that correct? A. That's right.

X-Q. When you left at 9 o'clock that night, was Robert Quirk on the premises? A. I didn't see him.

X-Q. And I understand you to say you don't know when he left the premises under arrest? A. That's right.

X-Q. Did you at any time see any of the agents talking to Quirk? A. I saw Investigator Cataldo speak with him.

X-Q Did you see any other investigator talking to him? A. Supervisor Fletcher.

X-Q. Where was that? A. It was in the yard.

X-Q. How long after the Quirks had entered the premises? A. Shortly after.

X-Q. You say you came back on the morning of February 24th? [256] A. Yes, sir.

X-Q. And who was with you? A. Investigator Mazaka.

X-Q. Any other agents? A. With me? No.

X-Q. How long did you stay on the premises at that time? A. Until after 12 o'clock.

X-Q. Noon or night? A. 12 o'clock noon.

X-Q. Did someone relieve you at that time? A. Yes, sir.

X-Q. Who were the agents that relieved you? A. Investigator Paone and Daly.

X-Q. During the time that you were on the premises on the morning of the 24th, did you talk to any of the Quirks? A. Not that I recall.

X-Q. Did you get any statements from anyone? A. No, sir.

X-Q. Did you see the milkman arrive that morning, of the 24th? A. I don't know whether it was the milkman. There were several people I saw coming and going.

X-Q. That did come in? A. Yes, sir.

X-Q. Did you see the oil man come in that morning? A. Not that I recall.

[257] X-Q. Do you remember any oil tanks outside, on a platform near the barn? A. No, sir, I don't recall.

X-Q. Did you dismantle this alleged still? A. No, sir, I did not.

X-Q. Did you take any of the contents of that barn before the Commissioner yourself? A. No, sir.

Mr. Toltz: That's all; thank you.

Redirect Examination by Mr. Lewald

Q. Will you look through these pictures, please? A. [Examining].

The Court: Put your question to him.

Q. You arrived at the premises on February 23d? A. Yes, sir.

Q. At about what time? A. At about 4.15 p.m.

Q. I ask you if those are fair representations of what you saw February 23 when you arrived with Inspector Cataldo? A. Yes. As I say, I didn't go into the barn part at the time. I only was in for a few minutes on the night of the 23d and didn't return until 4 a.m. on the 24th.

Q. You didn't go into the building? A. I was only very briefly.

Q. Are they fair representations? [258] A. Yes, they are.

Mr. Smith: Are these pictures already in evidence?

Mr. Lewald: Yes, they are exhibits. I have no further questions of Mr. Judd.

The Court: Step down.

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[271] THIRD DAY

Court Room No. 1,
Federal Building, Boston,
Thursday, June 13, 1957,
10.15 a.m.

[The Court entered at 10.53 a.m. after a long conference with counsel in the lobby caused by the illness of the defendant Bettencourt. Jury entered court room at 11 a.m.]

The Court: [to Jury] We have been delayed this morning because the defendant Bettencourt had some mild indisposition, and the doctor and nurse have checked him, and at the request of his counsel I am allowing him to be absent. He is in another room, resting. We will proceed.

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JOHN L. BARTELSON, Sworn

Direct Examination by Mr. Lewald

Q. Your name? A. John L. Bartelson.

Q. Your address? A. 77 Squantum Street, Milton.

Q. Who were you working for in 1953, Mr. Bartelson? A. The Wharf Forging & Welding Company.

Q. What were you doing there? A. As a blacksmith.

Q. Do you know how long you had been working there at that time? A. I had been working there a couple of years, two years.

Q. And do you remember when you did leave? A. I left somewhere around April 1, 1954. I don't remember [278] that date.

Q. Sometime before you left that employment do you recall a federal officer coming down to see you? A. Yes.

Q. And do you recall what it was about?

Mr. Smith: Wait a minute.

A. Yes.

Q. Now I ask you, sir,—if you could come down here, if you would; come down here with me.

[Counsel and witness step outside the bar.]

Q. Would you look at the people sitting on the first row, and I will ask you whether you have seen any of these people on the front row? A. Probably the third man on the right.

The Court: Why did you say "probably"? Do you recognize him or not?

The Witness: Yes, probably. Probably.

Q. Would you point him out?

Mr. Smith: I pray your Honor's judgment.

The Court: The jury will disregard such evidence as that "probably." We don't convict people on probabilities.

Q. Do you recognize the man?

Mr. Smith: I object.

The Court: He's answered that. All he can say is, "Probably." He said that several times.

[279] A. That looks like the man.

Mr. Smith: No question pending.

The Court: That may be stricken.

Mr. Lewald: The witness answered. Might I have that answer, "He looks like the man"?

The Court: No. Yes, you can have that answer for what it is worth.

Mr. Smith: I move to strike the answer.

The Court: I deny the motion.

Mr. Smith: There was no question before him at the time.

The Court: I understand.

Q. Would you resume the stand?

[Witness returns to stand.]

Mr. Smith: My objection is noted to that.

The Court: Yes.

Q. You said, "He looks like the man," did you not? A. Yes.

Mr. Smith: I object.

The Court: Let's not repeat that. I reversed my own ruling in your favor. I don't want him repeating it and repeating it.

Mr. Lewald: I was trying—well,—

Mr. Smith: I know what you were trying.

Q. When did you see this man before today? [280]

Mr. Smith: I object.

The Court: He hasn't said he ever saw the man. He said this man looks like somebody he saw, which is not sufficient to convict in this Court.

Mr. Lewald: I realize that, Your Honor, by itself. What I was trying to do was, this man looks like the man—

The Court: Well, he can't say that he saw this man before. All he can say is, he looks like a man he saw before. If you care to, you can ask him when he saw the other man.

Q. Where did you see the man that looks like this man before? A. Talking with Giovanni down at the Wharf Forging & Welding at the desk, at his desk.

Q. Do you recall when? A. Because I was about 75 feet or more from the desk where I was working.

Q. Do you recall when? A. I couldn't tell you the date.

Q. The approximate time? A. Somewhere around either before Christmas or after Christmas, somewhere around there. I couldn't tell you.

Q. My question is, when, what year? A. 1953.

Mr. Lewald: Your witness.

Mr. Smith: No questions.

The Court: Step down

MICHAEL J. DALEY, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Michael J. Daley.

Q. And your address, sir? A. 111 Park Street, Providence, Rhode Island.

Q. By whom are you employed? A. The Alcohol and Tobacco Tax Division, Internal Revenue Service, Boston, Mass.

Q. Now, at some time in February, 1954, did you have occasion to go to the Quirk farm in Sudbury? A. On February 24, 1954, I was assigned by the supervisor in charge—

Q. Well, did you go to the farm? A. Yes, sir,

Q. And do you recall what time of the day you got there? A. Approximately noontime, 12 or 12.30.

Q. Will you tell us who was there when you arrived? A. On arriving there I saw Special Investigator Crowley, Investigator Judd, Investigator Lanigan, and Special Investigator Skelley. That's all I can remember.

Q. And where were these investigators? A. They were around the premises doing different duties, checking evidence and so forth.

Q. Now what did you do when you arrived? [282] A. Upon arrival there I was contacted by Investigators Judd and Lanigan, who turned over to me nine samples in bottles marked and identified, to me, and shortly thereafter, during the afternoon, I took samples, four samples, placed in bottles and identified as a column, the top section of the column, 5-gallon can of finished product alcohol, and a sample from the condenser of alcohol that could be used for distillation.

Q. Well, sir, would you come down and look at these bottles which marked for identification 18-A through 18-I, if you will?

[Witness leaves the stand.]

A. I don't see them.

Q. Do you recognize them? A. Not here, no, sir. These [pointing] are the ones that were turned over to me by Investigator—

Q. You recognize those? A. Yes.

Q. What are those? A. Those are samples that had been turned over to me by Investigator Judd and Lanigan at that time.

Q. And what did you do with those bottles that were turned over to you? A. I placed them all in a carton and wrapped them carefully and tied them and returned them to Boston to the United States Chemist.

[283] Q. And did you get a receipt for them? A. Yes, sir.

Q. They were sealed when you got them and were sealed when you delivered them? A. Yes, sir.

Q. Would you go back to the stand?

[Witness returns to stand.]

Q. Now I show you those five bottles and ask you if you can identify them. A. Yes, sir. This [pointing] is the one I took from the column, marked and identified by my initials and the date, and the address of the violation. That's the one from the column. This is the one from the—

No, it's the one taken by Investigator Cataldo and turned over to me.

Q. Turned over to you also on the 24th? A. On that date, yes, sir.

Q. What did you do with that? A. I kept that with all the others and returned the fourteen to the chemist.

Mr. Lewald: I offer it for identification.

[Said sample taken from the column marked Government's Exhibit 22 for Identification.]

Q. Now state the next one. A. This one was taken from the alcohol in the 5-gallon can. This one was taken from

the column of the still. This one was [284] taken from the top section of the column which we call the booster.

Q. Those four samples you did what with, or those four bottles? A. I put them all with the others in the carton and returned all fourteen to the United States Chemist at Boston.

Mr. Lewald: Mark these also for identification.

[Said four samples marked Government's Exhibits 22-B to 22-E, respectively, for identification.]

Mr. Lewald: I have no further questions.

Mr. Smith: No questions.

Mr. Lewald: Mr. Simpson.

WILLIAM R. SIMPSON, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. William R. Simpson.

Q. Your address? A. 511 South Flake Drive, Clearwater, Florida.

Q. In 1953 and 1954 by whom were you employed? A. The Alcohol Tax Unit, Bureau of Internal Revenue, Boston, Massachusetts.

Q. Now, in accordance with your duties in February, 1954, did you go to the Quirk Farm in Sudbury, Massachusetts? A. Right.

Q. Tell is what time of the day and what day you arrived there. [285] A. About 2 o'clock.

Q. On what day? A. It was that day and the following day, sir.

Q What day, sir? A. [producing paper] February 23 and 24.

Q. February 23 and 24? A. Yes, 1954.

Q. Now, on the 23rd what did you do there? A. I went to assist Investigator Cataldo and Special Investigator Crowley and Skelley as a witness at this illicit distillery.

Q. And how long did you stay there on that day, if you recall? A. The first day?

Q. Yes. A. I stayed until about 6 o'clock at night.

Q. Then did you return to the premises that day? A. What is that?

Q. Did you return to the premises that day, again? A. The next day?

Q. No, that day. You left the premises and didn't return that day? A. No, I left with the trucks.

Q. On the 23rd? A. Yes, I left there at 6 o'clock.

Q. Did you return on the 24th? [286] A. I did.

Q. What time did you get there on the 24th? A As I remember, about 8 o'clock in the morning.

Q. Do you recall who was there when you got there? A. On the 24th?

Q. Yes. A. No, I think—I don't remember just who it was but there were two investigators of the Alcohol Tax Unit that had been there guarding the still overnight.

Q. Did you assist somebody in taking inventory? A. Yes, I took. I assisted Investigator Cataldo in taking inventory.

Q. Now will you look at the first row and I ask you whether or not you can identify any of the defendants? A. I didn't contact any of the defendants while I was there either day.

Q. Sir, I asked you if you can identify any of the defendants? A. No, I don't think—I didn't meet them while I was there.

Q. Did you meet any of them any other day? A. No.

Mr. Lewald: All right No further questions.

Cross Examination by Mr. Toltz:

X-Q. Mr. Simpson, you say the first time you were there was at two o'clock on the 23rd? A. Yes.

[287] X-Q. Of February? A. Yes. I was acting as ware-

houseman. I was sent there to take inventory of the part of the seizure that was taken to the warehouse, and I was there to see that it was loaded; and the rest, why, I was there to see it was properly disposed of and destroyed.

X-Q. You have been using some papers to refresh your recollection. A. Yes.

X-Q. Who made them? A. I made them at the hotel last night.

X-Q What did you make them from? A. I made them from my testimony, from—

X-Q. Have you got your testimony there? A. Yes [producing].

X-Q. Have you refreshed your recollection from that? Did you, sir? A. I did. We have the seizure here, as well as what was destroyed on the premises. This is signed by me and made the following day after the—the 24th.

X-Q. You looked at that to refresh your recollection? A. Most assuredly.

X-Q. Now, where have you in here, in any of your papers, that you where there on the 23rd? Would you take that one out you have put back in your pocket? [288] A. Those are different.

X-Q. Didn't you refresh your recollection from the paper you just put back in your pocket? A. No, this one here [pointing].

X-Q. What was that paper you put back, that you were looking at and testifying from? A. That's a copy. This one [indicating].

X-Q. That is all it is—is a copy of this one? A. Yes.

X-Q. Nothing else? A. Here it is [handing].

X-Q. How about this one underneath? A. That's another one, yes.

X-Q. And you were looking at that, weren't you? A. Not just now. Just this one here [pointing].

X-Q. Well, let's leave these here for a moment. A. Sure.

X-Q. And I will ask you where in here in any of your papers does it show that you were on the premises February 23 at 2 o'clock? A. It doesn't show. I know that from memory.

X-Q. You do, sir? A. Yes, sir.

X-Q. Well, would it suprise you, Mr. Simpson, if I told you that the raid was at 4.15 on February 23, 1954? [289] A. It would.

X-Q. It would surprise you? A. Yes, sir.

X-Q. Well, did you take part in the raid? A. I did not.

X-Q. You did not? A. No.

X-Q. So when you got there you mean the raid was over? A. Yes, sir.

X-Q. And you say it was 2 o'clock on the 23rd of February? A. As I refreshed my memory from this record here, and it is 2 o'clock. It is February 23rd.

X-Q. At 2 o'clock? A. No. At 2 o'clock I took from my memory.

X-Q. How long did you stay there on the 23rd? A. Stayed until about 6 o'clock.

X-Q. When you arrived the raid was over, wasn't it? A. Yes.

X-Q. And you have the names of those that you saw there when you arrived? A. No, I took that from memory.

X-Q. That is also from memory? A. Yes.

X-Q. And on the 23rd were any of the goods or machinery taken from this farm? [290] A. No, I think it was there intact.

X-Q. And when was that removed? A. The following day, February 24th.

X-Q. You say on the 24th you helped Mr. Cataldo make a list? A. On the 23rd.

X-Q. On the 23rd. About what time was it on the 23rd that you made your list? A. I suppose sometime in the afternoon.

X Q. Before 4 o'clock? A. Before I left, yes; before six.

X Q. Before 6 o'clock? A. Yes.

Mr. Foltz: That is all, thank you

Mr. Lewald: I have no further questions.

The Court: We will take the morning recess here.

[Recess from 11.36 a.m. to 11.40 a.m.]

VAHRAIN G. OHANESIAN, Sworn

Direct Examination by Mr. Lewald

Q. Your name? A. Vahrain G. Ohanesian.

Q. Your address? A. 216 Bellevue Road, Watertown.

Q Your occupation? A. Chemist.

[291] Q. For whom do you work? A. Alcohol and Tobacco Tax Division, Internal Revenue Service.

Q. Will you come down here and look at Government's Exhibits 20-A through E, and Government's Exhibits 18-A through I for Identification, and also Government's Exhibit 14-A through E for Identification? [Witness leaves stand.] Have you looked at them? A. I have.

Q. Can you identify them? A. Yes, sir.

Q. Resume the stand. [Witness returns to stand] I will ask you, sir, where you have seen those before? A. In our laboratory.

Q. They were turned over to you in your laboratory? A. Yes, sir.

Q. When you received them in what condition were they? A. Full, sealed bottles. Oh, they weren't all full but some of them were full, others weren't. They were sealed.

Q. Were there transmittals with them? A. Yes, sir.

Q. Did you examine their contents? A. Yes, sir.

Q. Will you tell us what the result of your examination was with respect to each of them? Do you want to come down and look at them? [Witness leaves stand.]

[292] A. We found this group to be

Q. Who were they delivered by, sir? A. I will have to look on the card.

The Court: Why don't you let him answer the previous question?

Mr. Lewald: All right.

The Court: What is in those bottles? [Witness examines card.] Is there a doubt in your mind? I asked you what was in those bottles.

The Witness: I'm trying to look up what is in each individual bottle. This series of 18 A through I are mash fit for distillation.

Mr. Smith: Speak louder.

The Court: Mash.

The Witness: Mash fit for distillation.

Q. Would you take this one, 18 A, with your number on it? Is that your number [pointing]? A. Yes, sir.

Q. Tell what you did to that and what the results were. A. This is a different series. They are mixed up here.

Q. Would you start with your numbers and go through them? A. Yes, sir. 1253] is marked 18-H. That was mash fit for distillation. 5.1[illegible] per cent alcohol by volume. 1262 marked 18-G. 5.6[illegible] per cent alcohol by volume, mash fit for distillation. 1293 1253 marked 18-F. 2.1[illegible] per cent alcohol; mash fit for distillation.

The Court: When you say it is fit for distillation, is that a sort of guaranty as to the quality?

The Witness: Well, it means it's got enough alcohol in it so it would be possible to distill it.

1253, 9.1[illegible] per cent alcohol by volume. That was mash fit for distillation. That is Government's Exhibit 18-F.

1253, 18-I, 8.0[illegible] per cent alcohol by volume, mash fit for distillation.

1253, 18-[illegible], 2.8[illegible] per cent alcohol by volume, mash fit for distillation.

12537, 7.45 per cent alcohol by volume; mash fit for distillation.

12538, 171.8 proof. We consider that to be heads and tails; has a shiny odor on dilution; distilled spirits, alcohol.

12539, 18-I, 189.2 proof; distilled spirits alcohol. Do you want me to go through all of them?

The Court: Can't you do it generally? The jury is not going to remember all these numbers and things. Is it a fair assumption—and counsel for defendants may object if I ask this question—is it fair as a general proposition that all of those samples are either mash fit for distillation or alcohol?

[294] The Witness: Yes, sir. That is, these bottles. We have five others that were not in that category.

Mr. Smith: Five bottles that were not what?

The Court: In that category.

The Witness: Five samples that are not in that mash category.

Mr. Smith: I have no objection.

The Court: All right.

Mr. Toltz: I have no objection.

The Court: All right.

Q .Now would you look at the other five while you are down here, and let us find out as to when you got them and who delivered them. A. Yes, sir.

Q. And what your analysis revealed as to their contents? A. These samples were received on February 24, 1954. They were delivered by Investigator Crowley.

Sample No. 12554, Government's Exhibit 14-C, from analysis we determined that was sodium salt sulfonated castor oil, called Turkey Red oil.

No. 12555 is dry yeast.

No. 12556 was dry yeast.

No. 12557 was a mixture of urea, phosphate, a small quan-

tity of ammonium salts, and some calcium and some sulfates.

And 12558, sodium bicarbonate — pardon me — ammonium [295] bicarbonate.

Q. Can you tell us what those chemicals are used for in a distillation process, if they are?

Mr. Thompson: Just a minute. I don't know how he can testify to that.

The Court: I don't think that's a proper question.

Q. Will you resume the stand? [Witness returns to stand.] How long have you been a chemist? A. 28 years.

Q. You went to a graduate school where? A. I didn't go to a graduate school. I went to Northeastern University.

Q. How long have you been employed as a United States chemist? A. Oh, a little over eight years.

Q. And your work has consisted of doing what? A. Analyzing various materials that were brought into our laboratory, most all of them containing alcohol.

Q. You have been working with these things for eight years? A. Yes, sir.

Mr. Thompson: Alcohol.

Q. Now, are you familiar with the distillation process of alcohol? A. Yes, sir.

Q. Will you tell us how you got familiar with it; what experience you had concerning it, and just what you have [296] done concerning it? A. Well, I had some experience when I was an undergraduate in our lessons and so forth, and since I have been graduated I have worked for the Alcohol Tax Unit as a storekeeper-gauger at various plants for eight or ten years, in which my job was to supervise distillation operations and see what is going on.

Q. Well, in supervising the distillation operation what do you do? A. You take note of the amount of various

substances that are added according to the product they make.

Q. The product that who would make? A. The distiller.

Q. What distillers in this area have you supervised? A. Regional Distillery, Newburyport Rum Distillery, Felton's Rum Distillery. That's about all there are right around here.

Q. Are there any in Boston you have supervised, any refractories? A. Well, Felton's is a distillery, rum distillery. They are in South Boston.

Q. In the course of this supervision are these articles here, Government's Exhibits 14-A to E for Identification, used?

Mr. Thompson: Where? By whom?

A. One of those here—I don't know what the number is offhand—that 12554 is something that is not used ordinarily. I haven't seen it used in any of the legitimate distilleries.

[297] Q. What is the product? A. That is the sodium salt sulfonated castor oil.

Q. What is its use? A. Its use?

Q. What is its purpose in a distillation process? A. It is not used.

Mr. Thompson: Just a moment.

The Court: He says it is not used.

Mr. Lewald: I beg your pardon?

The Court: He said it is not used in a distillery.

Mr. Lewald: In a legitimate distilling process.

Mr. Thompson: No, no, ordinarily.

The Witness: Ordinarily.

Q. Have you ever seen it used, sir? A. No, sir.

Mr. Thompson: What?

Mr. Smith: Who knows?

Q. Do you have an opinion as to what use it might be?

Mr. Thompson: I object.

The Court: No, you can't have that.

Q. Do you have an opinion, sir, as to the effect of putting sulfonated castor oil in mash or on mash—what it would be?

Mr. Thompson: Objection.

The Court: I will sustain the objection.

Q. Have you made an experiment with sulfonated castor oil, sir? [298] A. In what respect?

Mr. Smith: Yes or No.

Mr. Toltz: Yes or No.

Q. Have you made any experiment with sulfonated castor oil?

The Court: Can't you answer that?

The Witness: Yes.

The Court: Then do so.

Q. Have you supervised or watched experiments made with it? A. No, sir.

Q. Have you supervised or observed its use in mash? A. No, sir.

Q. What experiments have you made with it?

Mr. Thompson: I object.

The Court: I sustain the objection. Why don't you ask him the question what qualities does that have?

Q. What qualities does sulfonated castor oil have? A. It is a substance that is used in canning, making soaps.

Mr. Thompson: Canning?

Mr. Lewald: Are you objecting to it?

Mr. Thompson: I am not objecting.

A. In canning, making soaps, and it is used as a foam depressant.

Mr. Lewald: I have no further questions. I offer these exhibits.

Mr. Thompson: No questions.

[299] [Government's Exhibits 14 and 18 for Identifica-

tion now admitted as Government's Exhibits 14 and 18, respectively.]

Mr. Toltz: One question.

Cross Examination by Mr. Toltz

X-Q. Have you had any experience with brewer's grain? A. Brewer's grain?

X-Q. Yes. A. I don't know exactly what you mean by experience with brewer's grain.

X-Q. Do you know what brewer's grain is? A. Yes, sir.

X-Q. Do you know ensilage is? A. Ensilage, yes.

X-Q. Do you know what that is? A. Yes, sir.

X-Q. You have had some experience with it? A No, I haven't.

X-Q. But you know what it is? A. I think I do.

X-Q. Is there an odor that comes from brewer's grain? A. No, sir.

X-Q. None at all? A. None that I have ever run across.

X-Q. Do you know if there's an odor that comes from ensilage? [300] A Yes.

X-Q. And isn't the odor from ensilage something like an odor from mash? Isn't that so, sir? A. No, I don't think so.

X-Q. Well, what type of an odor do you say comes from ensilage? A. I don't know as I could explain what type of an odor. It's just an odor.

X-Q. Well, is it a sweet smelling odor? A. No, I wouldn't say so.

X-Q. Is there a sweet smelling odor from mash? A. No, I wouldn't say so.

X-Q. What kind of an odor do you say would come from mash? A. I wouldn't know. Just a mashy odor.

X-Q. Well, what would you say is a mashy odor? A. It depends on the product that is used when you make that mash odor.

X-Q. Well, you've been making experiments on mash that was brought to you? A. All we did was distill it.

X-Q. But there was mash brought to you? A. Right.

X-Q. Is that right? A. Sure.

X-Q. What kind of an odor came from that mash? A. A mashy odor.

[301] X-Q. What do you mean by a mashy odor?

The Court: Like mash!

A. Open up one of the bottles and you will note it. I don't know how to identify it. It's a mashy odor.

X-Q. You don't know much about it, do you, sir? A. I certainly do.

X-Q. You don't know much about the ensilage either, do you? A. I certainly do.

X-Q. But you can't tell us the type of odor, whether sweet, sour, or what type of odor comes from it? A. I was born and brought up on a farm. I know what ensilage smells like.

X-Q. All right. Then you can tell us. A No, I can't, because it's forty years since I smelled ensilage.

Mr. Thompson: You wouldn't forget it.

X-Q. Well, Mr. Witness, what is ensilage? A. Chopped up corn to put in the silo.

X-Q. Yes. What do they do with it? A. As far as I know, they feed it to cows.

X-Q. Is it allowed to stand and ferment? A. It's not allowed to ferment but it just does.

X-Q. It does ferment, doesn't it? A. Naturally.

X-Q. It ferments somewhat like mash? [302] A. I wouldn't say the odors are similar.

X-Q. I didn't ask you that. I said it ferments like mash. A. It ferments.

X-Q. It ferments, doesn't it. A. Yes.

X-Q And there is an odor that comes off? A. Yes, sir.

X-Q. Is it a strong odor? A. It all depends on how long it's fermented.

X-Q. We had a few odors here this afternoon, so you might as well get it. A. It all depends on how long it's fermented before you smell it.

X-Q. In other words, the longer it's fermenting the stronger the odor; is that right? A. That's right.

X-Q. And a strong odor from ensilage can be detected three, four, five hundred yards away? A. I don't know.

The Court: Are you trying to set aside the search warrant?

Mr. Toltz: It might be.

The Court: Well, it isn't the way to do it.

Mr. Toltz: Well, I withdraw that, your Honor.

X-Q. Mr. Witness, when this ensilage ferments it produces alcohol, [303] does it not? A. That I don't know.

X-Q. What? A. I should but I don't.

X-Q. You should but you don't? A. I say, you say I should but I don't.

X-Q. Maybe you should know but you don't. A. You seem to think that I should.

Mr. Toltz: I think you're an expert, so I asked you. That is all.

Mr. Lewald: Would it be fair to say that the odor of fermenting mash has a peculiar smell all its own?

The Witness: I would say so, yes.

X-Q. [By Mr. Toltz] How about ensilage? Has that got a peculiar smell all its own? A. I would say so, yes.

X-Q. And different from the mash odor? A. I would say so.

X-Q. Are you going to be in the court room a little later today, do you know? A. I don't know.

The Court: Step down.

Mr. Toltz: Would you remain here this afternoon, please?

[304] THOMAS J. NORTON, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Thomas J. Norton.

Q. Your address? A. 35 Hilltop Drive, Millis, Mass.

Q. Your occupation? A. Chief of the Special Tax Stamp Section, Internal Revenue.

Q. Prior to coming here today did you search the records of the District Director? A. I did, sir.

Q. And what was the result of your search? A. I was asked to check the file for a number of individuals to ascertain whether they had a tax stamp either for the manufacture or the removal of a still. No such names were on file in the Director's office.

Q. Did you check the year 1953 and 1954? A. Yes, sir.

Mr. Lewald: I have no more questions.

Mr. Smith: No questions.

[Witness leaves the stand.]

Mr. Lewald: Mr. Norton, would you resume the stand?

[Witness returns to stand.]

Q. [By Mr. Lewald] What were the names of those persons you checked the record for?

[305] Mr. Smith: I object.

The Court: I will sustain the objection.

Q. Prior to coming here, I ask you whether, after searching your records, you found if an application for permission for removal of a still was filed with the District Director's office for 1953 and 1954 by Robert D. Quirk?

Mr. Toltz: I object.

The Court: What is the purpose of this? Step up here.

[Conference at the bench.]

Mr. Lewald: May I come to the bench again?

The Court: Yes.

[Another conference at the bench.]

Mr. Lewald: You may step down. Mr. Cavanaugh.

CLARENCE V. CAVANAUGH, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Clarence V. Cavanaugh.

Q. Your address? A. 172 Austin Street, Hyde Park.

Q Your occupation? A. I am a reviewing officer in the Alcohol and Tobacco Tax office, Boston, Assistant Regional Commissioner.

[306] Q. Prior to your coming here today did you check the records of the Commissioner's office? A. Pardon me?

Q. Did you check the records of the Commissioner's office? A. I did, sir.

Q. And what forms were you checking for? A. I was checking for Forms 110, which is an application and a permit for removal of a still, and Form 1609, which is an application and permit to set up a still, and Form 26, which is the registration of a still.

Q. Now, sir, did you check those through for the years 1953 and 1954? A. I did, sir.

Q. Did you find any such applications for the Quirk Farm in Sudbury, Massachusetts?

Mr. Toltz: I object.

The Court: I will allow the question. But I don't want the jury to draw any inference from the fact that this farm is described as the Quirk Farm. It happens to be the farm we are talking about but I don't want you to draw any inference as to a connection between the Quirks themselves and the farm itself. We are not talking about the farm.

Q. Did you find any records—

Mr. Lewald: Would you read the question, please?

The Court: Did you find any records with reference
[307] to this farm property we are discussing about?
The Witness: No, sir.
Mr. Lewald: No further questions.
Mr. Toltz: No questions.
The Court: Step down.
Mr. Lewald: Mr. Yarin.

* * *

[312] ARTHUR P. SKELLEY, Sworn

Direct Examination by Mr. Lewald

Q. Your name, please? A. Arthur P. Skelley.
Q. Your address? A. 31 Radcliffe Road, Somerville, Mass.
Q. Your occupation, Mr. Skelley? A. Special Investigator, Alcohol and Tobacco Tax Division, 55 Tremont Street, Boston.
Q. Now, on some occasion in 1954 did you assign, or did you go to the Quirk premises in Sudbury, Massachusetts? A. I did.
Q. Did you make a search and observation while you were on the premises? A. I did.
Q. When did you go there? A. I was assigned to go there for—
Mr. Thompson: No, if your Honor please.
The Court: When did you go there?
The Witness: I went there on September 24th—no, February 24, 1953.
Q. Will you tell us what date you went there again, sir? A. February 24.
Q. Whar year? A. 1954. Pardon me.
[313] Q. What did you do when you got there? A. When I was there I was with Special Investigator Lannigan, and we made an observation of the property and saw different articles on the premises.

Q. Could you come over here, if you will? [Witness leaves stand.] I will ask you if you can identify any of these articles here? Can you? A. I can.

Q. Would you keep your voice up so the reporter can hear? A. Yes, sir.

Q. I show you this attachment, gauge and nipples and elbows, marked Government's Exhibit 8A and ask you if you can identify them? A. I can identify it by saying it was seen on the premises in the cellar while we made our observation.

Q. Did you later see it on another occasion? A. I did.

Q. And when was that? A. When I took it from the premises to have it identified by Mr. Curtin, I believe, of the Waltham Supply Company.

Q. Now I show you this valve and nipple and broken elbow and ask you if you can identify them? A. This also was—

Mr. Smith: What is that?

Mr. Lewald: Exhibit 8-A.

[314] Mr Smith: No, the other one was what?

Mr. Lewald: I didn't put the tags on them.

[Exhibits separated by Clerk.]

A. This also was seen in the cellar of the still premises and—

Q. Will you tell us when you saw it on the still premises? A. On February 24.

Q. Will you go along down the line? A. This pail was seen on the premises in the cellar.

Mr. Smith: Pardon me, but would you give the exhibit number each time?

Mr. Lewald: There is no exhibit number.

Q. Go ahead, Mr. Skelley. A. It was seen on the premises on February 24 and taken for identification purposes.

Q. You later saw it on another occasion at another place?

A. Offhand I cannot say the gentleman's name but I believe one of the salesmen—

Mr. Smith: No, no.

A. I took this to the Waltham Supply Company, where it was identified by a salesman by the name of Ralph—

Mr. Smith: No, no.

The Court: That may be struck. The jury will disregard what was identified by somebody else.

Q. You found that on the premises? [315] A. Yes, sir.

Q. With the tags or without the tags? A. Without the tags.

Mr. Lewald: I offer the pail.

Mr. Smith: I object to it.

The Court: I will allow it.

Mr. Smith: On behalf of the defendant Yarin.

The Court: All right.

Q. This next object, the red object standing up, with a motor attached, where did you see this? A. I saw this on the premises on February 23, just outside the underground cellar. At that time it had a metal tag on it, which I removed.

Mr. Smith: What is the exhibit number.

The Clerk: 23.

Q. I will ask you, sir, to look at Government's Exhibit 20 for Identification and ask you if you can identify it? A. I can identify this as the tag that was affixed to the motor on this oil burner.

Mr. Lewald: I now offer this tag.

Mr. Toltz: I object.

Mr. Smith: Let me see it [handed]. No objection.

[Exhibit 20 for Identification now admitted in evidence as Exhibit 20.]

Q. Where did you find this coil of tubing? A. That was found on the still premises in the cellar, and [316] removed by me for identification purposes.

Mr. Lewald: I offer it.

Q. It was found without a tag? A. Yes, sir.

Mr. Smith: I object to that on behalf of the defendant Yarin, your Honor.

The Court: I will sustain the objection until Yarin is tied up to it. I will allow it in evidence generally.

A. [continued] This item was found ~~in the~~ cellar of the still premises on February 24 and was removed by myself and Special Investigator Lanning for identification purposes.

Q. What is this [pointing]? A. It is what is known as a flex run.

Q. What does it do?

Mr. Smith: I object.

The Court: What is that?

Mr. Smith: What does it do—was the question.

The Court: What is it, first?

The Witness: It is what is known in the trade as a flex runner. It is used in the construction of a boiler like to go to the firebrick.

The Court: All right. I will allow it.

Mr. Smith: Objection on behalf of the defendant Yarin.

The Court: All right.

[317] A. This [pointing] was found in the still premises in the cellar.

Mr. Toltz: I object to the still premises.

Q. Where did you find it?

The Court: The apartment where the still was found.

A. It was found on the illicit—

Mr. Toltz: I object to the word "illicit."

A. It was on the Quirk farm.

Q. In what type building? A. A barn-type structure or building, and it was removed for identification purposes.

Q. This [pointing] is what? A. Oil filter assembly.

Mr. Smith: Are you offering it?

Mr. Lewald: I am.

Mr. Smith: I would like to be advised. I object.

The Court: Well, I will admit the evidence; but I will still call to the jury's attention that until you are satisfied there is a conspiracy here this evidence is not applicable to anybody. It was something found on the farm owned by the Quirks, but it isn't apparently tied up yet to any one individual.

Mr. Thompson: If your Honor please, at the present time I object to anybody who never was there or knew anything about it who happened to be a defendant as applying to them but only to such people as—

[318] The Court: I will sustain your objection to people who weren't there. I don't know who they were but I will sustain the objection.

[Firebrick marked Government's Exhibit 24; Oil filter marked Government's Exhibit 25.]

Q. I show you this switch assembly here and ask you where you have seen that before? A. This was in the cellar of the barn type structure building on the Quirk farm in Sudbury, Mass., and removed by me for identification purposes.

Mr. Lewald: I offer the switch assembly.

Mr. Smith: I object on behalf of the defendant Yarin.

The Court: All right. The same ruling. I will admit it.

[Switch assembly marked Government's Exhibit 26.]

Q. I show you this. What is it? A. That was found in the cellar of the barn type structure building on the Quirk farm in Sudbury and was removed for identification purposes.

Q. What is that? A. It is what they call plastic pipe.

Mr. Smith: For the purpose of the record, why don't you make a specific offer so we can make a specific objection?

[319] [Witness returns to witness stand.]

Mr. Smith: Pardon me. I don't know whether that last object was offered or not.

The Court: I will receive the evidence; but I will again call to the Jury's attention it can't be tied up to any individual until you are convinced that that individual, or any of them, were part of the conspiracy to violate the alcohol tax laws.

Q. Now, sir, I show you these pictures which are Government Exhibits. Will you pick out the barn type structure, if you can?

[Piece of plastic pipe marked Government's Exhibit 27.]

Mr. Smith: I object to that on behalf of the defendant Yarin.

The Court: All right. What is the next question now?

Mr. Lewald: I am asking the witness to pick out from these exhibit pictures the barn type structure that he found these materials in.

The Court: All right.

[Witness identifies pictures.]

Q. Now would you show it to the jury?

Mr. Smith: What exhibit is that?

Q. What exhibit is that? A. This is Government's Exhibit 5-E.

[320] Q. Pointing to the oil burner assembly, sir, you say you saw that on the premises of this barn type structure? A. Just outside, on the ground.

Q. And did you later remove it or was it later removed somewhere else? A. It was later removed on February 24, nineteen and—

The Court: 54.

A. —54, to the government warehouse in Roxbury, Mass.

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[342] Q. Now, sir, can you identify the defendant Mr. Bettencourt? Do you know Mr. Bettencourt? A. Yes, I do.

Q. Will you stand up and look around the room?

Mr. Thompson: He isn't here.

Mr. Lewald: Oh, I'm sorry.

Mr. Thompson: I'll admit he is the man.

Q. Did you have some conversation at some time in the course [343] of your investigation with Mr. Bettencourt? A. I did.

Q. And could you give us the date of the conversation? A. On September 10, 1954, at the Prager Tanning Company located at 73 Lowell Street, Peabody, Mass. Mr. Bettencourt told me that, on February 19, 1954, he called the Salem Oil & Grease Company in Salem, Mass., and ordered from them five pails of sulfonated castor oil. He ordered them to bill them to the Barnstead Canning Company in Barnstead, New Hampshire, and to ship it to the Fast Finishing Company, 40 Union Street, Peabody, Mass,; that later that same day he left a note with $770 on the desk of Mrs. Gray, the bookkeeper, for the Fast Finishing Company, and the note said that she was to pay for the merchandise upon its arrival; that later he received a communication by telephone from Mrs. Louise Gray, who stated to him that there wasn't enough money to pay for the merchandise; that he told her to get the money from somewhere; that he would himself or send someone with the balance to her, which he stated he did, but he was unable to state whether he did it himself or sent someone else.

He stated that later that same day he removed the five pails of sulfonated oil from the Fast Finishing Company in his own automobile and drove to his own residence on Prentice Street, Peabody, Mass,; that he removed the merchandise into his residence and later the same evening he

[344] reloaded the five pails into a truck and drove it to the Barnstead Finishing Company in Barnstead, New Hampshire, and he was accompanied by John Bulger, that Bulger or his brother John never knew what this merchandise was to be used for; that in the course of three weeks he had used merchandise for tanning leather.

He further stated that the reason he had the shipment sent C.O.D. was due to the fact that he figured that the credit situation he needed to get the merchandise would take considerable time and that he needed the merchandise the same day, and that is the way he handled the matter.

Q. Did you have some further conversation with Mr. Bettencourt? A. I did.

Q. Will you give us that? A. On June 8, 1955, I again visited Mr. Bettencourt at the Prager Tanning Company, and at that time Mr. Bettencourt told me that within three weeks of my visit the telephone number had been changed from Jefferson 2-2217M to a new number; that he occupied a single residence with his wife Lucy, a boy eighteen, and a girl nine years; that he could not understand how the telephone call that was made, supposed to have been made from his residence, was made as he knew that his wife Lucy and his son and daughter did not know Mr. Goldstein, and that he had never seen Mr. Goldstein before in his life.

[345] Q. Is that the entire conversation which you had, to the best of your memory? A. That's all that I can recall.

Mr. Lewald: Your witness.

Cross Examination by Mr. Thompson

X-Q. Did you go up to the Barnstead Tanning Company? A. Beg pardon, sir?

X-Q. Did you go up to the Barnstead Tanning Company? A. I did, sir.

X-Q. What's that? A. I did. To Barnstead, New Hampshire, not to the plant.

X-Q. Well, the tanning concern, the Barnstead Tanning Company up in Barnstead Center, New Hampshire,—did you go up there? A. Yes, I know where it is, yes.

X-Q. Did you go up there? A. I went to Barnstead, New Hampshire, but I didn't visit the plant.

X-Q. Oh, I see. And you knew that he worked all the time for the Prager Leather Company? A. That's right.

X-Q. And that this had this leather business up there in New Hampshire separately? A. That's right.

X-Q. And his partner owned the Fast Finishing Company there? [346] A. Yes.

X-Q. Did he tell you that is one reason why he had the stuff shipped there? A. Yes, sir.

X-Q. And that he also took up at the same time a lot of other merchandise? A. At times, he said.

X-Q. And even on this weekend did he tell you they went up there on Fridays and Saturdays, when they got through their work in Peabody? A. He told me they went up there on Fridays and Saturdays to tan leather.

X-Q. Yes. And that they had some natives up there working during the week? A. That's right.

X-Q. And that they went up and did that. And did he tell you he was the only one that mixed the material in the tanning processes. A. Yes, sir.

X-Q. And that his partner did the outside work—the gentleman who testified here the other day? A. John Bulger.

X-Q. Yes. A. He didn't tell me that. He told me that—

X-Q. Did he tell you he did the outside work? A. No, sir.

[347] X-Q Did you find out what he did in the firm? A. I found out that he was an officer in the corporation.

X-Q. But you didn't find out what work he did? A. No.

X-Q. You found out that the Barnstead Tanning had a truck of their own? A. Yes, sir.

X-Q. And he told you that he took that material all up in the truck when they drove up Friday nights? A. That is right.

X-Q. And of course you checked his records to see if he was in any trouble with you people before, didn't you? A. Yes, sir.

X-Q. And you found he never had been? A. Not to my knowledge.

Mr. Thompson: That is all.

[Conference at the bench.]

The Court: We will declare a short recess.

[Recess from 2.41 p.m. to 2.58 p.m.]

[Big pipe and valve formerly marked Government's Exhibit 9-B now marked Government's Exhibit 9-C; Short pipe and valve formerly marked Government's Exhibit 8-B now marked Government's Exhibit 8-C]

The Court: Any cross-examination?

Mr. Michelson: No cross-examination.

* * *

[348] *Cross-examination by Mr. Toltz*

X-Q. Mr. Skelley, you say when you got on the premises on the 24th of February you made observations of the property; is that correct? A. No, I didn't make observations of the property. The entire property?

X-Q. Of the Quirk property? A. No.

X-Q. Did you go into the truck barn as they call it? A. Cow barn?

X-Q. The truck barn where the trucks were stored? A. I didn't see any trucks.

X-Q. Didn't you come in with some man? [349] A. Yes, sir.

X-Q. And see some machinery in that part of the build-

ing where the trucks were stored? A. I went into a cow barn, sir, where there were cows.

X-Q. Is that where the cows were? A. Yes, sir.

X-Q. You didn't count them, did you? A. No, there was none in there, I believe, at the time.

X-Q. When was that, Mr. Skelley? A. That was sometime late in the afternoon of February 24.

X-Q. You were in the cow barn and you say you saw no cows? A. I don't believe there was any there when I was there.

X-Q. Was that the cow barn that was near this building where all this machinery was stored? A. Yes.

X-Q. Did you come back on to the property at some time after the 24th? A. The 25th.

X-Q. And did you come back there after the 25th of February? A. On several occasions.

X-Q. Did you go into Robert Quirk's home at any time? A. Yes, sir. Which Robert Quirk? On his property?

X-Q. I don't know. I asked you, sir. Did you go into Robert Quirk's home? A. Well, he owns a dwelling on the property where the seizure [350] was made, with his mother; then beyond where the seizure was made he has another private dwelling. Beyond where the seizure was made, in the private dwelling, I didn't go into that property.

X-Q. Well, which one did you go into? A. I went into the property, the house across from the cow barn.

X-Q. You saw his mother there? A. Yes, sir.

X-Q. That's the house you went into? A. Yes, sir.

X-Q. Did you inspect the wiring in that house? A. I followed the—

X-Q. Did you inspect the wiring? A. Yes, sir.

X-Q. Did you inspect the plumbing in that house? A. No, sir.

X-Q. Now, did you go into the other house? A. Yes, sir.

X-Q. Did you inspect the wiring there? A. To a certain fuse box in the cellar.

X-Q. Did you inspect the plumbing in there? A. No, sir.

X-Q. Did you have anyone with you? A. Special Investigator Lannigan was working with me at that time; but he did not—on this occasion that I think you are [351] referring to I was accompanied by a man by the name of Jones.

X-Q. And did you point out to this man Jones certain items of machinery or wiring that was in one of the other buildings? A. In the cellar of where the seizure was made there was a fuse box.

X-Q. I asked you, sir—would you mind answering my question—did you point out to this Mr. Jones the wiring or the plumbing in either of the two residences, in the homes? A. No, sir. He pointed it out to me.

X-Q. Jones did? A. Yes, sir.

X-Q. So there was wiring and there was plumbing in both of the houses used as homes? A There was wiring.

X-Q. Is that correct? A. Yes, sir.

Mr. Lewald: What house is he talking about?

Mr. Toltz: He describes it: the one where the mother was, where he found the mother in, and the other small house.

X-Q. Is that what you said?

Mr. Lewald: He says he wasn't in the Robert Quirk house.

Mr. Toltz: I believe he said he was. Let's straighten it out.

[352] X-Q. Were you in that other little house that Robert Quirk lived in? Were you in two residences or in one? A. Well, I was in the residence where the seizure was made. That is a barnlike structure.

X-Q. All right. Let's end this. Were you in the house where there were sleeping quarters, kitchen, bedrooms? Were you in any such house? A. Well, I know in the place where the seizure was made there was two cots and a portable shower.

X-Q. Is that where you saw Mrs. Quirk, the mother? A. No.

X-Q. Well, now, where did you see her? A. In the larger house across from where the cow barn was

X-Q. Did you take Mr. Jones into that house? A. Yes, sir.

X-Q. And did he point out electrical wiring and plumbing in there? A. Electrical wiring.

X-Q. He point that out to you? A. Yes.

X-Q. Now, did you go into the other samll house, not where the seizure was made but where there were bedrooms and a kitchen? A. No; no, sir.

X-Q. You never did go in there? A. No, sir.

X-Q. Now you say you went into the cow barn? [353] A. Yes, sir.

X-Q. and there were stalls for cows in that barn? A. I believe so.

X-Q. On both sides? A. I believe so.

X-Q. It was a long barn; is that right? A. Yes.

X-Q. And when were you in there? A. I was in there on February 24.

X-Q. And who was with you? A. Mr. Jones.

X-Q. Who is Mr Jones, Mr. Skelley? A. He is an employee of the Edison Electric Light Company of Maynard, Mass

X-Q. Mr. Skelley, did you go down to the pond in back of the barn-like building at any time? A. No, sir.

X-Q. Did you observe the back of this barn where contraband was found at all? A. No.

X-Q. At no time? A. In back of the barn?

X-Q. Yes. A No, sir, I never went down through there at all.

X-Q. In all the time that you went to this farm? [354] A. That's right.

X-Q. Did you meet Mr. Quirk's sister at any time on the premises? A. I believe that she was present there on one occasion with Mr. Quirk's mother, at the time that I went on to the premises with Mr. Black of the Waltham Supply Company, to have him look at the black pipe and the portable shower on the premises where the seizure was made.

X-Q. Is is a simple question I asked you, sir,—whether you knew Bob Quirk's sister. Is that what I asked you? A. That's right.

X-Q. I didn't ask you about Mr. Black, did I? A. You asked me if I met Bob Quirk's sister.

X-Q. Yes. A. I never met her personally.

X-Q. Did you ever talk to her? A. I don't recall that I ever did.

X-Q. Did you ever talk to Bob Quirk? A. At the time—

X-Q. Did you ever talk to him? Yes or No. A. No, I had no conversation with him.

X-Q. At no time? A At no time.

X-Q Did you notice the piping and machinery in the cow-barn when you were in there? [355] A. I didn't notice anything in the cow barn only what Mr. Jones was showing me.

X-Q. What did he show you in the cow barn? A. He showed me an electric wire.

X-Q. Anything else? A. That's all.

X-Q. Did you go all the way into the barn? A. Yes, sir.

X-Q. You didn't observe any machines there? A. I did not.

X-Q. None at all? A. I didn't make any observation of any machinery.

Mr. Toltz: That is all.

Mr. Levald: I have no further questions, Mr. Skelley. That is the Government's case, your Honor.

The Court: All right. I'll hear the defense, if any.

[Conference at the bench, during which the following was recorded:

Mr. Smith: I have these motions [handing].

Mr. Thompson: One is on the conspiracy and the other is on the other one [handing].

The Court: I'm going to let Yarin out right now. And Bettencourt.

Mr. Smith: How about Goldstein on the conspiracy?

[356] The Court: Wait a minute. Where is Yarin?

Mr. Michelson: I just gave them to you. One is on the conspiracy and the other is on the count.

The Court: I see.

Mr. Smith: Are you going to rest?

Mr. Smith: Yes.

The Court: How about the Quirks?

Mr. Toltz: I'm going to rest as to Gerald.

The Court: Now you filed motions?

Mr. Smith: A motion for judgment of acquittal on the conspiracy, and the first count being waived.

The Court: What is the difference? You say acquittal and what?

Mr. Smith: I said the first count.

The Court: I think I will let the case stand as it is.

Mr. Smith: Note my objection and save my rights.

The Court: Yes, objections are noted. I think there is enough there to go to the jury.

Mr. Toltz: May I file all these motions I have [handing]?

The Court: Yes. I will reserve the right [357] to a verdict on the defendants if they are found guilty. I don't think I will.]

The Court [to the Jury]. I'm going to ask the jury now to return a verdict of not guilty against both Yarin and Bettencourt. As a matter of law I rule that there is not sufficient evidence to go to the jury as to these two men on either count of conspiracy or the substantive offense. So I will ask the Foreman now, when the Clerk makes the inquiry, to return a verdict of Not Guilty as to both Bettencourt and Yarin.

The Clerk: The jury will please rise.

Mr. Foreman and Members of the Jury, have you agreed upon your verdict on Indictment 55-158, United States v. Irving Yarin? What say you, Mr. Foreman? Is Irving J. Yarin guilty or not guilty.

The Foreman: Not Guilty.

The Clerk: On Indictment 55-159, United States v. Frank Bettencourt, what say you, Mr. Foreman and Ladies and Gentlemen? Is Frank Bettencourt guilty or not guilty?

The Foreman: Not Guilty.

The Clerk: Members of the Jury, harken to your verdicts as the Court has recorded them. On 55-158, United States v. Irving J. Yarin you find the defendant Irving J. Yarin not guilty; and on 55-159, United States v. Frank Bettencourt, you find the defendant not guilty. So say you, [358] Mr. Foreman? So say you all, Members of the Jury?

[General assent.]

Mr. Toltz: I'm going to waive the opening, if your Honor please.

The Court: All right.

The Clerk: Mr. Foreman and Members of the Jury, there is one more indictment.

On 55-154 what say you? Is the defendant Irving H. Yarin guilty or not guilty.

The Foreman: Not guilty.

The Clerk: On 55-154, United States v. Frank Bettencourt, what say you? Is the defendant Frank Bettencourt guilty or not guilty?

The Foreman: Not guilty.

The Clerk: Members of the Jury, harken to your verdicts as the Court has recorded them. On 55-154 you find Irving H. Yarin not guilty and Frank Bettencourt not guilty. So say you, Mr. Foreman? So say you all, Members of the Jury?

[General assent.]

You may be seated.

Mr. Toltz: Robert Quirk.

ROBERT D. QUIRK, Sworn

Direct Examination by Mr. Toltz

Q. Will you speak up so the Court and Jury can hear you. What is your name? [359] A. Robert David Quirk.

Q. You live where? A. Mossman Road, Sudbury, Mass.

Q. How old are you? A. 32 my next birthday, July 2.

Q. Married? A. Married.

Q. How much of a family have you? A. I don't have any family outside of my wife.

Q. Just your wife? A. Just my wife.

Q. Now, you are part owner of the property we have talked about here as the Quirk farm? A. I am.

Q. Who owns the property with you? A. My mother, Norma.

Q. How long ago did you purchase the property? A. In 1948 we made the first move to purchase the property subject to the court approval, and we finally got the property in 1951.

Q. And how long have you been living on this property? A. 1950, February.

Q. February of— A. 1950.

Q. —1950? [360] A Yes.

Q. Is that when you got out of the Service? A. No, I was discharged from the Service—

Mr. Lewald: I pray your Honor's judgment to this, going into this—

A. —1946.

Mr. Lewald: —background.

The Court: Well, it's not material.

Q. Now, Mr. Quirk, will you describe for the Court and Jury the layout on the Quirk farm as to buildings? A. I will describe the buildings. As you approach in the main yard the big house, what we call the big farmhouse would be on your left, and the big cow barn would be on your right.

Q. Yes. A. Back of the big cow barn and off to one side is the building that would be what we call the ranch farmhouse where the alleged still was. Still facing the main yard, my own home would be 300 feet to the left of the big cow barn and 200 feet back from the street. Back of my own house again, my own home, possibly 300 feet or more, would be another barn which we call the calf barn; and in back of this, again, is what everyone refers to as the artificial pond, about 300 feet. That would be my description of the property.

Q. Now, as to the barn where the alleged contraband was, is there a road that leads around it? [361] A. There is a road that goes right by it.

Q. How far does it go? A. It goes down into our fields and back out on to Route 117.

Q. How wide a road is it? A. We have had our trailer trucks over it.

Q. And how wide would that be? A. 10 feet wide.

Q. Now, from the main house,—and I understand that is where your mother and father lived? A. That is correct.

Q. How far is it from the main house to this barn where the alleged still was? A. About 300 feet to one corner of the barn.

Q. Can you see from the main house into this barn? A. You cannot.

Q. The cow barn that you describe,—how long a barn is it? A. Altogether over 200 feet long.

Q. Is it one story or two stories? A. It's on two different levels.

Q. In so far as the lower level of this calf barn and the barn in which the alleged still was, how far is one away from the other? A. 75 to 100 feet.

Q. Can you see from the cow barn into this other barn we are talking about? [362] A. No.

Q. As the grade of the land, which is higher: the cow barn or the other barn? A. The other barn would be higher.

Q. Now, was the cow barn in use from October 1953 through February 1954? A. It was.

Q. What did you have in the cow barn? A. Cows.

Q. How many cows did you have in there? A. When?

Q. In October 1953? A. Practically 35 head.

Q. How many cows did you have in there in December and January 1953—December '53 and January '54? A. I made an addition to the herd of 20 to 25 cows.

Q. Now what system did you have in the cow barn as to the milking of the cows in October 1953? A. For milking cows we had an electric motor with a vacuum on it, with milking machines.

Q. When did you put the electric motors into the cow barn? A. We always had electric motors in the cow barn.

Q. And did you always milk your cows by electric power? A. We did.

Q. And in October you milked 35 cows and in December and [363] January about 60? A. That is correct.

Q. Or about 20 or 25 more. Now what type of electrical system did you have in this cow barn? A. We had 110-220 service underground cable from my mother's house.

Q. In October 1953 was there electricity in the barn where the alleged still was? A. No, there was not.

Q. When did you put electricity in that building? A. We had a power failure between my mother's house and the cow barn. The line itself—

Mr. Lewald: The question is when, I believe.

The Court: That is right.

Q. When? When did you put electricity into the other barn or—yes, into the other barn? A. At the same time we put it in the big cow barn.

Q. Would you know when that was, what month? A. The end of October.

Q. Of what year? A. 1953.

Q. Were there some circumstances that caused you to do that? A. Yes.

Q. What were they? A. We had an underground cable from my mother's house to the [364] cow barn, and somewhere underground—it was an old cable and it exploded and it short circuited itself out so that we had to replace it.

Q. Then what did you do? A. I went down to Watertown Electric in Watertown, and I explained to the man down there what I had in mind and what was the cheapest way to do it, and he explained to me that if I ran wires overhead that would be the cheapest way to put the electricity back in the barn. I told him that I only wanted to do the job once and I wanted to do it right, that I could not take overhead wires from the house to the barn where I ran trailer trucks that had loads of hay on them 12 foot 6, and I didn t want to take any chances of knocking the wires

down; so that I asked him if he would make a list of electrical motors that I had in my barn and if he would get me a cable that would carry the proper amount of electricity to the cow barn. And at the same time I made up my mind that I was going to put a wire from the barn over to the other house where the alleged still was.

Mr. Lewald: Can we have the name of this man?

Mr. Toltz: Yes.

Q. Who was this man that you talked to? A. Arnold Joyce from Watertown Electric.

Q. Is he the man that testified here? A. That's the man. [365] Q. Now you did then put in underground wiring that connected both the big house, the barn, the cow barn, and this barn; is that correct? A. That is correct.

Q. When this barn in which the alleged still was, was that barn occupied in the summer of 1953? A. It was.

Q. What part of it was occupied? A. There was a 3-room apartment over the cellar of this so-called ranch barn, and my brother Gerald lived in this building.

Q. Was he married? A. He was married.

Q. Did he have any children at that time? A. He just got his first child.

Q. When did he move out? A. He moved out of the building in October.

Q. Was there a reason for moving out?

Mr. Lewald: I pray your Honor's judgment.

The Court: Describe the occasion, not the reason.

A. He moved out of this barn because—he moved out of this apartment because there was no heat in it, and his wife and he had a new baby there, and he was worried about the baby getting sick; so that he took an apartment away from the farm, up at a place called Briardale Farm about three miles away [366] from our own place.

Q. Did you intend to make a new apartment in this building? A. We intended to have the building consist of two

apartments, and we were going to fix the second apartment the following summer.

Q. So that in October 1953 this barn and the apartments above it were empty? A. That is right.

Q. What were you using it for? A. When it was empty?

Q. Yes. A. I had no use for the building.

Q. No use for it at all? A Outside of a storage building.

Q. And did you store in that building? A. I did.

Q. Now, in October 1953 was the house that you were living in completely built? A. It was not.

Q. And when did you begin to build that house? A. When we took over this farm there existed there a cellar hole—

Q. When did you begin to build that house? Can you tell us that? A. 1950.

[367] Q. And at that time was there any part of the house up? A. Foundation, rough framework, part of the roof, rough partitions.

Q. From that time on were you continuing to build this house? A. I was.

Q. And had you been buying the material from different firms? A. I had.

Mr. Lewald: I pray your Honor's judgment to this leading.

Mr. Toltz: Maybe I am leading.

Mr. Lewald: Let the witness testify.

Mr. Toltz: May I have the exhibits on the purchases from the different hardware and electric stores, please? [Handed.]

Q. Mr. Quirk, in October of 1953 what was your occupation? A. I was doing several things.

Q. Well, will you tell the Court and Jury what you were doing? A. I was attending Suffolk University, going to school full time, I was milking cows, I was feeding pigs, and I was transporting hay and straw from Canada.

Q. Did you also have a contract to pick up— A. Feed for the pigs? I did.

Q. I couldn't think of the word. Now you say you were going to school daytimes? A. I was.

[368] Q. And when did you take care of the cows? A. Before I went to school and after I came home.

Q. When did you take care of the pigs? A. Before I went to school and after I came home.

Q. In so far as the transporting of hay, where in Canada did you go? A. Province of Quebec, Canada.

Q. And how often did you go? A. According to my school schedule. If it would leave me free for a couple of days then I would take a trip. Mostly on the weekends or if we had some holidays from school.

Q. And other then that who took the trips? A. My brother Gerald.

Q. And what would you do with the hay when you brought it back? A. Distribute it around to the different farmers, put some in our barn, call up some of the customers and they would come to the farmyard and take the hay from us.

Q. And what kind of a vehicle did you use for transporting hay? A. 1948 Diamond T tractor with a 32-foot platform trailer.

Q. When did you spend time studying? A. Nights.

Q. Now, as you continued to build the house were you buying different articles from different supply houses? A. I was.

[369] Q. Now I show you Exhibit 7-A. There are some bills from the Watertown Electric Supply. Will you tell the Court and jury what you use these supplies for? A. Each item?

Q. No, no, we'll leave that to the United States Attorney. Just tell us what you used these for?

Mr. Lewald: May that be stricken?

Mr Toltz: Oh, I'm sorry. I didn't mean to say that.

Mr. Lewald: Ask him a question and then he can answer your question.

Q. All right. What did you use these items for? A. My own home, the cow barn, the buildings, my mother's house.

Q. At some time you purchased a shower, Mr. Quirk? A. That is correct.

Q. And where did you put that? A. I stored that shower in the basement of the building where the alleged still was.

Q. Was it used at any time in October 1953 through February of 1954? A. Not to my knowledge.

Q. Did you ever set it up or connect it? A. I did not.

Q. Where had you intended to use that shower? A. In my brother Gerald's apartment.

Q. Now, Mr. Quirk, you come down here for a moment, please. [370] [Witness leaves stand.] Will you stand over there so the Court and Jury can see. Now this is Exhibit 9-B. Do you know what this is, Mr. Quirk? A. It is a valve.

Q. Did you purchase that valve? A. I don't know as I purchased that valve. I don't think I did.

Q. Did you ever purchase a valve like that? A. I did.

Q. Is it on your property now? A. No, sir.

Q. Where is it? A I have a pump—I had a pump, and I sold the pump to a man that is in the artesian well business.

Q. What is his name? A. John Ingham.

Q. And is he available? A. He is.

Q. Will he be in court? A. He will.

Q. You sold him one like this? A. That is correct.

Q. Now I show you Exhibit 8-C. Do you know what this is? A. Yes, sir.

Q. What is it? A. 2-inch valve.

[371] Q. Did you purchase that valve? A. No, sir.

Q. Did you purchase a valve like it? A. I did, sir.

Q. Is it on your property? A. No, sir.

Q. Where is it now? A. Back in my brother Gerald's car.

Q. So it is outside the Court House? A. That is correct.

Q. And available to be brought into court? A. Yes, sir.

Q. Now I ask you, sir, if you know what—

Mr. Toltz: I understand the numbers of these have been changed. The first one would be 8-C, and the second one would be 8-D.

Q. Now, Mr. Quirk, I show you Exhibit 27 and ask you if you know what that is? A. Yes, sir.

Q. What is it? A. It's a flexible pipe neck.

Q. Did you purchase that? A. No, sir.

Q. Did you ever purchase anything like that? A. Yes, sir.

[372] Q. And where have you used it on your farm? A. Up in the piggery.

Q. And is connected now? A. No, sir.

Q. Where is it now? A. It's on the farm.

Q. It's on the farm? A. Yes, sir.

Q. What do you call that? A. Flexible pipe connector.

Q. And it's on your farm now? A. Yes, sir.

Q. Now I ask you, sir, if you know what Exhibit 24 is? A. Yes, sir.

Q. What is it, sir? A. It's brick they build a firebox out of.

Q. Did you ever purchase that brick? A. No, sir.

Q. Did you ever purchase anything like it? A. Yes, sir.

Q. And where is it now? A. It's on the farm.

Q. Where on the farm? A. Just around the farm. I don't know where it is.

Q. What did you use it for? [373] A. I built a garbage cooker.

Q. The garbage cooker was for what? A. To comply

with federal regulations for cooking garbage to feed pigs.

Q. Have you pigs on the farm now? A. No, sir.

Q. Do you use that now? A. No, sir.

Q. But you have that on your farm? A. Pieces of the thing that I constructed are still on the farm.

Q. Where you constructed this burner; is that what it was? A. It was a garbage cooker.

Q. Now I ask you to look at Exhibit 23, Mr. Quirk. Do you know what that is? A. Yes, sir.

Q. What is it? A. That's cement that you use in the construction of a firebox

Q. This particular can—can you lift that? [Witness lifts.] Did you purchase that can? A. No, sir.

Q. Had you ever purchased anything like that? A. Yes, sir.

Q. And what did you use it for? A. For making a firebox.

[374] Q. And is the firebox still on your premises? A. No, sir.

Q. Where is the firebox? A. The firebox that I constructed didn't work out for my purpose and I had to pull it apart but the pieces still remain there. It wasn't adapted for my purpose.

Q. What was the purpose that you got it for? A. To cook garbage in?

Q. Are the pieces still around? A. Yes, sir.

Q. On your farm? A. Yes, sir.

Q. And available there now? A. Yes, sir.

Q. With this substance? A. Oh, I don't know if that still would retain itself in its native form. Mine is going back a period of four years.

Q. But it is still on the farm? A. Yes.

Q. And it is available to be seen with the other parts? A. That is right, sir.

Q. Did you ever seen this object here, Exhibit 25? A. No, sir.

Q. Do you know what it is? A. Yes, sir.

[375] Q. What is it? A. It is an oil burner filter.

Q. Did you purchase this oil filter? A No, sir.

Q. Did you ever purchase any filter like that? A. Yes, sir.

Q. And where did you use it? A. In my home, sir.

Q. Is it there now? A. Yes, sir

Q. Available to be seen? A. Yes, sir.

Q. What is it connected to in your home? A. To the oil burners.

Mr. Toltz: All right, you may go back to the stand.

The Court: I think we will suspend here. It's a good place to suspend. I find that tomorrow I cannot sit so you are on holiday until Monday but come back Monday.

[Adjourned, at 3:48 p.m. to 10 a.m., Monday, June 17, 1957]

[376] FOURTH DAY

Monday, June 17, 1957

The Court: I would like the jury to be as comfortable as you can be. Use your own judgment. If it gets too hot we are going to suspend before the usual time.

Mr. Toltz: If your Honor please, may I have the blackboard? I would like to introduce a sketch.

[Blackboard is brought forward.]

Mr. Toltz: Mr. Lewald.

[Mr. Toltz and Mr. Lewald confer.]

The Court: Can t we proceed to get started while it is a little cool?

Mr. Toltz: That might be a good idea. Will you look at that Mr. Lewald? If necessary, I will get the surveyor in here.

Mr. Quirk, will you come forward? I am going to ask a question about this plan.

ROBERT E. QUIRK, *Resumed*

Direct Examination by Mr. Toltz, Continued

Q. Mr. Quirk, you have seen this sketch of your property? A. Yes, sir.

Q. Would you say whether this is a fair representation of your property and the roads around it on February 23d of 1954? A. It is.

Mr. Toltz: I am going to offer this. I have shown [377] this to the United States Attorney. I am going to offer it as a fair representation of the roads on February 23d.

Mr. Lewald: My objection.

The Court: What is the objection?

Mr. Lewald: The objection is that this purports to be drawn to scale by the writing on it.

The Court: What writing?

Mr. Lewald: The writing, the markings on it, the various things. He offers it as evidence. I am going to object to it as evidence. If it is offered as a chalk, it's all right.

Mr. Toltz: May I use this as a reference at this time for the different farms, roads, without the question of width or anything else? We won't go into that.

The Court: You may use it as a chalk only.

Mr. Toltz: This is to show the different houses, the ponds, and so forth.

[Plan is affixed to blackboard.]

Q. Mr. Quirk, would you come down for one minute?

[Witness leaves witness stand and goes to plan at blackboard.]

Q. Would you stand aside of this? Will you point out the

building in which the alleged still was in? A. That would be this building here [indicating].

Q. Where is the cow barn, the one with the cows? [378] A. That would be this barn here [indicating].

Q. Where is your mother's home? A. This is her home [indicating].

Q. Where is your home? A. Up here [indicating].

Q. And then there is a garage on the premises? A. There is. This is the garage [indicating].

Q. Where is the pond in reference to your property? A. This would be the pond [indicating].

Q. That is the pond up there? A. Yes, sir.

Q. Is there a road in back of the ranch house? A. There is, sir.

Q. That is the house in which the still was in? A. This road here [indicating].

Q. That is the road? A. Yes.

Q. It goes out to what route? A. Route 117.

Q. All right, sir. Would you return to the stand, please?

[The witness returns to the witness stand.]

Q. Mr. Quirk, had you purchased two 275-gallon oil tanks? A. I had, sir.

Q. Where are those oil tanks now? A. One of them is still on my property at the front of the hay [379] barn. One of them is over at the Acton Quarry.

Q. Is this the hay barn here? A. Yes, sir.

Q. The other one is where, sir? A. At the Acton Quarry.

Q. And the 275-gallon tank is there now? A. Yes, sir.

Q. The other one is where, sir? A. At the Acton Quarry.

Q. Have you some interest in the Acton Quarry? A. I have, sir.

Q. What is it used for there? A. It stores fuel oil for a Diesel engine.

Q. In the cow barn, will you tell the Court and jury what electrical equipment you had in that barn?

Mr. Lewald; When?

Q. On February 23d, 1954? A. I had a large water pump. I had an air compressor, a vacuum compressor for milking the cows, twelve 40-quart jugs, a cooling refrigerator. I had a hot water heater in the milk house, attached to the cow barn, and I had possibly twenty 100-watt bulbs.

Q. In February of 1954 were they in use? A. They were.

Q. Were they in good working condition? A. Yes, sir.

Q. As I understand it at that time you had, I think you said, around 70 cows? [380] A. No, sir. I had around 55 cows, maybe 60 altogether.

Q. 55 or 60? A. Yes, sir.

Q. What did you feed these cows? A. We fed the cows hay, grain, Brewer's grain, ensilage, apple pumice, molasses and a small amount of salt.

Q. Do you know what Brewer's grain is? A. Yes, sir.

Q. Will you tell the Court and jury what it is? A. That would be what is left from the brewer after they have used it up. It is good for cow feed.

Q. Where did you get this Brewer's grain? A. From the Harvard Brewery in Lowell. They trucked it in.

Q. Did the Brewer's grain have some odor? A. Yes.

Q. What type of odor? A. It would have an alcoholic smell about it.

Q. This ensilage, where did you keep that in the barn? A. On the map, you see a silo, and that had the ensilage in it. That is attached to the barn.

Q. Where it says silo here? A. Yes, sir.

Q. And what is this ensilage? A. That is chopped up and put into storage by a fermenting process. It preserves itself.

[381] Q. Does that let off an odor? A. It does.

Q. What type? A. It smells bad.

Q. Well, has it an alcoholic odor in any way? A. I would say so, sir.

Q. Was that silo filled with ensilage during the month of February of 1953? A. No, sir.

Q. 1954? A. No, sir.

Q. When was the last time it had ensilage? A. It was full at the beginning of the season, but by about the middle of February it was half gone.

Q. In other words, it was half full in February of 1954? A. Yes, sir.

Q. You testified on Friday that you had certain items similar to what the Government produced in evidence, is that right? A. That is right, sir.

Q. You promised that you would have those items in here today. A. That is right, sir.

Q. Have you got them? A. I have.

Q. Will you come down here, please? A. Yes. [Witness leaves witness stand and goes to the desk.]

Q. What have you got? [382] A. I have a valve.

Q. Will you turn around and face the jury and Court? A. I have the valve —

The Court: Face the jury.

A. [Continuing] I have the valve I purchased from the Waltham Supply Company, and I brought it in.

Q. Where was that valve? A. This valve was over in the quarry I have an interest in in Acton.

Q. Did you take it off something there? A. Yes, sir.

Q. To bring it in? A. Yes.

Q. What was it attached to? A. A compressor.

Q. And the compressor is where now? A. Right at the quarry.

Q. Still at the quarry? A. Yes, sir.

Mr. Toltz: I am going to offer the valve. It is heavy. Shall I bring it closer to you, sir?

The Court: No. I don't know why you want to introduce it in evidence, either.

Mr. Toltz: Well, maybe you are right. Maybe we will save some exhibits. I withdraw that at this time.

[383] Q. This is the one you purchased? A. That's right.

Q. Is that right? A. That's right, yes.

Q. What else have you here, sir? A. I have a piece of lining from a fire box I made under by garbage cooker. It wasn't practical so I myself dismantled it, and I still have the remains of it at the farm.

Q. There are other pieces there now? A. Yes, sir.

Q. That is what you had purchased? A. Yes.

Q. That is similar to the piece the Government produced? A. That is correct, sir.

Q. What else do you have here, sir? A. I have a fire brick that went on the outside of the lining. I purchased quite a number of these and still have them at the farm.

Q. These were purchased from some dealer? A. From the Waltham Supply.

Q. The dealer that was here? A. Yes.

Q. What else have you there? A. The fuel oil filter. That is the the fuel oil filter I bought and installed on my heater.

[384] Q. Did you take it off the heater to bring into court? A. Yes, sir.

Q. What is this? A. That is a piece of plastic pipe, and this is a connector. These are connecting clamps.

Q. Where was that used, sir? A. That was used for watering the pigs.

Q. Will you take the stand, please? A. Yes ,sir.

[Witness returns to witness stand.]

Q. Will you tell the Court and jury how that was used for watering pigs? A. Back in the late part of 1953 I wanted to put water up on the hill to where our piggery was. So I piped a line from my cow barn up to the piggery, and I bought some 2-inch black iron pipe to run up to the piggery, and the black iron pipe brought the water up to within reach of my piggery, and I purchased plastic

pipe so that I could pick up the hose and go from one trough to another and fill up the water containers. And a little bit later on we drew our water supply from a culvert. It is not too far from the pig barn. And we pumped this dry. And we didn't have water supply enough for the cows and the pigs, so that I then put a stationary pump in the middle of the field and and attached it to our irrigating pond with some more black iron pipe and plastic pipe, and then the culvert was [385] enough for the cow barn.

Q. Are there any other pipes still there that lead from the pond to the piggery? A. Yes, sir.

Q. And can be seen on the farm? A. They are on the farm.

Q. That is among the purchases you have made? A. That is correct.

Q. Now there was some testimony here about Built Rite material. A Yes, sir.

Q. Can you tell the Court and jury whether you purchased any Built Rite material? A. I did, sir.

Q. What was it used for? A. Our cow barn was very cold. It had a high ceiling in it. So that we put a false ceiling in part of the barn with some 4 by 8 sheets, ½ inch thick, of pressed fiberboard. That didn't work out very good because of the perspiration from the cows and from the other smells, from the other barn smells. It sagged and warped and just wasn't doing the job. So I told the fellow down at the Maynard Building Supply my trouble, and he suggested Built Rite sheathing, 2 by 8 sheets. So that I told him to go ahead and get it for me, that I wanted to put that up in the rest of the barn. He got it quicker than I [386] thought he would. So I took delivery on it and I stored it in this building where the alleged still was found.

Q. When was the next time you saw this Built Rite material, Mr. Quirk? A. The next time I saw this Built Rite material was on February 24, 1954.

Q. Where did you see it? A. It was still in the packages that it came in, and it was on a half-ton blue Chevrolet pickup truck, and the government removed it from my property.

Q. In the packages? A. In the packages. I also stopped the driver of the truck and I told him that my material belonged to me, and I wished he would leave it on the farm. He told me it was found in the building, and that they were taking it. When they returned the search warrant to me another day or so later, I looked on this warrant and it didn't say they removed the Built Rite Sheathing.

The Court: That is not in answer to any question counsel has put, is it?

Mr. Toltz: The answer may be stricken, your Honor.

Q. Just answer my question, Robert, please. A. I'm sorry.

Q. Now there was some testimony about some asbestos board, Mr. Quirk. Did you purchase any asbestos board? [387] A. I did.

Q. What did you purchase it for? A. I had a large trailer truck, and these barns we had are all wooden, and we had hay in them, and I was afraid of fire, so I purchased the asbestos board to put around the area where the trailer truck was garaged.

Q. Did you show that to anyone immediately after the raid? A. I did not, sir.

Q. Was it still in the truck area at the time of the raid? A. It was.

Q. Is there any of it there now? A. There is a small amount of it, sir. We have removed one section of one barn since the raid.

Q. There is some still there? A. A small amount of it.

Q. Mr. Quirk, there was some testimony about seven bundles of rock lath. Did you purchase any rock lath? A. Yes, sir.

Q. What did you purchase it for? A. I purchased the rock lath to plaster my back hall.

Q. Of whose house? A. Of my own home.

Q. Is it still there? A. Yes, sir.

Q. Can it be seen? [388] A. Yes, sir.

Q. Mr. Quirk, did you have an oil filter assembly in your home? A. Yes, sir.

Q. Was it affixed to something? A. It was affixed to the wall, the foundation of my own home.

Q. Is it there now? A. No, sir, I brought it in.

Q. Was that the oil filter you showed us a moment ago? A. Yes.

Q. I'm sorry. I thought maybe I had missed one. Now, Mr. Quirk, down to the time of the renting of what you have on there called a ranch house, where the alleged still was in, would you tell the Court and Jury when you rented that house? A. I rented that building January 18, 1954.

Q. Will you tell the Court and Jury the circumstances of the renting of that place? A. I drove into the main yard of the farmyard, and there was a car parked in the yard, and I went over to the car, and I asked the fellow in the car if I could help him. And he said I could if I was the owner. I said that I was. He said that he was interested in hiring a building for storage, and did I have any buildings for storage. I told him that I had several buildings, that I would rent any one of them. I pointed out the garage to him. I told him there were two other buildings down back and for him to go and look at them and see if [389] any one of them would serve his purpose. He went down back by himself.

About 20 minutes later he came back up and he told me the barn in back of the cow barn would suit his purpose. I asked him what it was. He said "To store some machinery." He asked me when it was available, and I told him he could have it then, but I could only give him that barn for

four or five months because my younger brother would be moving back in again with his family. He said that would be all right.

The Court: Who was this man?

The Witness: This man's name was Joe Fuci.

Q. Did he give you the spelling of his name? A. He gave me the spelling of his name when I gave him the receipt for his money.

Q. How much was that? A. $25.

Q. Can you describe this man, Mr. Quirk? A. Yes, Sir.

Q. Will you do that for the Court and Jury? A. He was dark complexioned, I would say of Italian extraction, about 5 foot 6, stocky, probably weighed around 165 or 170 pounds. He had on a dark overcoat, and a soft hat, and they were kind of on the dingy side or worn look about them.

Q. Did you see this man again? A. I never seen that man again.

[390] Q. How much time, Mr. Quirk, did you spend on the farm each day for a matter of four months prior to February 23rd and, say, four months after February 23rd?

A. Actually working on the farm? I spent about three hours in the morning and three hours at night doing the milking of the cows and the chores and the feeding of the pigs.

Q. And between those hours what did you do? A. Drove to Boston, went to school, Suffolk University, completed my day there and went home again.

Q. What did you do when you came home? A. If we had a load of hay in the yard I would take that and deliver it or I would see about getting the load off the truck.

Q. And then after the milking of the cows in the evening, what was your program? A. I would go home, do some studying, and most of the time we had some incidental work around the farm that had to be done, repairing or something like that. The time was always pressing.

Q. How many hours a day, would you say, took up your schooling and your work on the farm? A. At that time I was putting in 17 or 18 hours a day

Q. Sometime in February of 1954 did you have a Halloween party at home? A. I did, not a Halloween party but a Valentine party.

Q. A Valentine party, I'm sorry, I am way off the month. You had come there that night? [391] A. I did, sir.

Q. Do you know Mr. Barber? Is that his name? A. Yes, sir.

Q. What was his full name? A. Clyde Barber.

Q. Do you know his occupation? A. Yes, sir.

Q. What is his occupation? A. He is in the disposal business.

Q. The disposal of what? A. Trash and garbage.

Q. Did you see Mr. Barber very often? A. Yes, sir.

Q. Is he in the court room right now? A. Yes, sir.

Q. From the time you rented this ranch house, when was the first time you were in it from that time on? A. From the time I rented it?

Q. Yes. A. The night the federal agents took me back over there.

Q. What day was that? A. February 23rd.

Q. Where were you at about 4 o'clock on the afternoon of February 23rd, 1954? A. At that time I was down on Route 117 at a garage called [392] Frost's Garage with my trailer truck.

Mr. Lewald: This is the 25th?

Mr. Toltz: The 23rd.

Q. The 23rd, 1954. When did you arrive back at your farm? A. Around 5 o'clock.

Q. When you arrived what did you find, sir? A. I found the farmyard was full of cars and a whole lot of men were running around there.

Q. What was the next thing that happened, sir? A. I

was in my brother Gerald's car. He was driving. I got out of the car. I walked over to a group of men, and one of them asked me who I was. I said, "My name is Robert Quirk and I own this place. What is your name? Can I help you?"

Q. What did he say? A. He told me he was a federal officer, that his name was McCarthy. So I said, "Well, how do I know who you are?" So then another man started talking, and he introduced himself as Mr. Fletcher, and he took out his credentials and he showed them to me, and he said, "Is this what you are looking for?" So I looked at his papers and they said on them Internal Revenue, Treasury Department. And I said, "Now I know who I am talking to," and I passed his papers to my brother and showed him.

Q. Then what happened? A. Then I said, "What do you want from me?" He says, "You're [393] in some trouble."

Q. Who was that? A. That is Mr. Fletcher.

Q. Yes. A. When I saw Internal Revenue, I said to him, "What is the matter? Is something wrong with my income tax?" He says, "No, this isn't income tax. We are from the Alcohol and Tobacco Tax Division." I said, "What do you want from me?" He said, "You've got quite a place down back." I said, "Down back where?" He says, "Down in back of your cow barn." I said, "I don't have any place down in back of my cow barn. I have a building rented down there." He says, "That's the one." So I said, "What is this all about?" He says, "We found a still down there."

So I was amazed. I said to him, "What's a still?" So he went on to explain what a still was for. And he said to me, "Do you want to take a look at it?" I said, "Yes, sir." So he took my brother and I over to the building and through it.

Q. All right. What happened after that, sir? A. We came back out of that building, and Mr. Fletcher said to me "Do you want to tell us all about it?" I said, "Tell you

all about what, sir?" He said, "All about the still." I said, "I told you everything that I can." "I rented that barn, and there is nothing else I can tell you about it." So he said to me, "You understand, of course, you're going [394] to lose your farm, your cows, your truck, that you're going to go to jail?" I said, "I don't know anything about that, because I haven't done anything wrong yet." So I asked him if it would be all right if I went down and started to milk the cows. And he said, "No, you better stick around here." I said, "Well, the cows have got to be milked on time, if you can have somebody start doing it." He says, "I guess that would be all right, if you go down and milk them." So my brother and I went down to the barn and started milking the cows.

Q. All right. What happened after the cows were milked? A. After the cows were milked?

Q. Yes. Did you have any conversation with anyone after that? A. Well, while we were milking the cows one of the milking machines wasn't working too good, and I told my brother to go up and get the tool kit and see if you can do something about the pulsator. He went up in the barn and came back and said, "My tools are gone." So I said, "I will see if I can find them for you." So I went out to all the men that were drifting around and I inquired of them as to the whereabouts of the tools, and one of them told me that Mr. Fletcher had them. So I asked Mr. Fletcher if he had the tools. So at first he told me, No, not to bother him. And I went back down to the cow barn. After a few minutes he came back into the cow barn and said, "Come on with me. I've got your [395] tools." So we went up to the back of his car, and he had the set, the whole tool kit. So he gave us our tools.

Q. During the time you were milking the cows did some other members of your family arrive? A. My mother and father came into the cow barn while we were milking, and

my mother said to me, "Bob, what is this all about?" I said to her, "That barn I rented, Ma. These are all government agents and they found a still in there." So she said, "What are they going to do?" I said, "Don't worry about anything, Ma. Go up to the house. We will get it straightened out some way." She and my father went up to the house.

Q. By the way, does your father work on the farm? A. My father doesn't work on the farm. My father is retired from the Fire Department in Watertown.

Q. Is your mother here today? A. My mother is not.

Q. Where is she? A. My mother is home.

Q. Is she ill or what? A. No, but my mother has a low blood pressure condition, and if something excites her or anything it puts her right in bed.

Q. Now continue. You then had a talk again with Mr. Fletcher? A. I went outside and saw Mr. Fletcher again, and he asked me if there was anything else I wanted to tell him, and I said, [396] "I have told you everything, sir." And he said, "We are going to have to arrest you." And that is when I first met Mr. Cataldo. He got Mr. Cataldo, and he said, "I am putting Mr. Quirk in your custody."

Q. So the first time you met Mr. Cataldo was about at what time? A. It would have been about 7 o'clock at night.

Q. Was that the first time you had talked to Mr. Cataldo? A. It was.

Q. Did you go somewhere with him? A. Yes.

Q. Where? A. Mr. Cataldo told me I would have to accompany him. I said, "Well, let's go." So he said, "No, you're all dirty and everything. Why don't you go home and change your clothes?" So at first I said, "I've got to go anyway."

Q. Did you go home and change your clothes? A. Yes.

Q. Well, to shorten it up, did you go with Mr. Cataldo? A. Yes.

Q. Where did you go? A. Down to the Sudbury Police Station.

Q. While you were with Mr. Cataldo did you have any talk with him? A. I did.

[397] Q. What did you say and what did he say? A. Mr. Cataldo and I were sitting in the back of the Sudbury cruiser, and he said to me, he got very personal and said, "Bob, you're in a lot of hot water." And I said, "Is that so?" He said, "Yes. Why don't you help yourself?"

The Court: Who said this?

The Witness: Mr. Cataldo.

The Court: He called you Bob?

The Witness: Yes, sir.

Q. "Why don't you help yourself?" A. "Why don't you help yourself?" I said, "I have told them everything I can." And I heard Mr. Fletcher mention that they had the man that rented the building, so all I had to do is identify the man, and I'm not in hot water any more. He says, "They don't have anybody. All we have is you." So the Chief of Police of Sudbury came over to the cruiser then and asked me to get out of the cruiser, and I asked him, "For what?" He said, "I want to take your picture." So I asked Mr. Cataldo, I said, "Do I have to have my picture taken?" And he said, "No." I said, "I'm sorry, Chief. I don't want my picture taken." So he told me, "I'll get it anyway because you're going down to the Sudbury Police Station and I'll take it down there."

Q. Did he take your picture? A. He did. We drove from the farm down to the Sudbury Police [398] Station, and we pulled into the Fire Department yard. He asked me to get out of the cruiser and I did, and he took my picture out in the yard, front and side view out in the yard.

Q. Then you were taken somewhere else? A. I was taken to the Framingham Police Station.

Q. Did you talk to anyone else that night? A. No, sir.

Q. You saw Mr. Skelley on the stand here? A. Yes, sir.

Q. An Agent of the Tax Unit Division? A. Yes.

Q. How many times have you seen him from the time of the raid at your place, at your farm? A. On three different occasions, sir.

Q. On one of those occasions did you have a talk with him? A. I did, sir.

Q. Will you tell the Court and jury what he said to you and what you said to him? A. Yes, sir. I arrived home one day and I came into the farmyard, and my sister came right out of the main house, she is my oldest sister, Norma, and she was crying.

Mr. Lewald: I pray your Honor's judgment.

Mr. Toltz: Well, strike it out.

The Court: The jury will disregard all this.

[399] Mr. Toltz: I am not interested in that.

Q. Did he have some talk with you about the still, what he was going to do, what you were going to do? A. I was leading up to that, sir.

Q. Well, forget your sister's part. The Court is not and the jury is not interested in that. A. I went back to the back of my cow barn, and Mr. Skelley was there. I asked Mr. Skelley if somebody had asked him who he was and what he was doing on the premises. He said, "Yes." I said, "Why don't you tell them who you are when you come in here?" He says, "You don't have any say-so about this farm whatsoever. We can come and go as we please on this place." I said, "Mr. Skelley, you're working for the government and you're doing a job, and I appreciate that fact. All anyone here asks you is to identify yourself and do your business. And as far as you telling us what to do on our own place, we are still paying the mortgage on this farm. As long as we are doing that we still consider the place ours." I said, "Unless you have a warrant to be on this place, from now on I don't want you on the place."

So with that, why, I put him off the place. And his parting words to me were, "If it's the last thing I do, I'll take this farm away from you. You're going to lose everything. And I'm even going to finish you up in school."

The Court: How did you put him off the farm?

[400] The Witness: We got quite loud, both of us.

The Court: How did you put him off the farm?

The Witness: Mainly by voice.

The Court: By voice?

The Witness: Yes, sir.

The Court: You told him to go?

The Witness: I told him to go.

Q. Some time after that did you get a call to go to the Registrar's office at the school? A. I did.

Q. What did they tell you?

The Court: No. We will have none of that. We are trying an alcohol case here.

Q. Some time after that did you stop going to school? A. Yes, sir.

Q. Mr. Quirk, some time in January of 1954 did Mr. Barber help you do something on your property? A. Some time in January?

Q. Yes or No. A. Yes.

Q. Can you fix the time or the date? A. It was before I rented the building, probably a week previous.

Q. What did he help you do, sir? A. He helped me put in an electric stove up in the top part of [401] that ranch building.

Q. The building in which the alleged still was? A. Yes, sir.

Q. Was there anything in that building at the time other than what was your own? A. No, sir.

Q. Was there a still set up there at that time? A. No, sir.

Q. You say Mr. Barber was with you? A. Yes, sir.

Q. Mr. Quirk, were you running a still on your premises? A. I was not, sir.

Q. Were you evading taxes on liquor being manufactured on your premises? A. I was not, sir.

Q. Did you conspire with anybody to put a still on your premises? A. I did not.

Q. Did you know there was a still on your premises? A. I did not.

Mr. Toltz. You may inquire, sir.

Cross-examination by Mr. Lewald

X-Q. What day did you say you rented these premises or certain buildings on these premises to someone? A. January 18, 1954.

[402] X-Q. At the time you say you rented these premises you were paid certain money? A. Yes, sir.

X-Q. How much were you paid? A. $25.

X-Q. By check or cash? A. Cash, sir.

X-Q. You gave a receipt for that, did you not? A. I gave a receipt for it.

X-Q. Are you the sole owner of these premises? A. I am not.

X-Q. When had you seen this man before that you were telling us you rented the premises to? A. Please?

X-Q. When had you seen him before? A. I had never seen him before.

X-Q. You knew him? A. No, sir.

X-Q. What time of day did he arrive there, did you say? A. I didn't say.

X-Q. What time of the day did he arrive? A. Around 4 o'clock.

X-Q. It was getting dark at that time, was it not? A. Yes, sir.

X-Q. How long did he stay there? [403] A. About 20 minutes.

X-Q. Twenty minutes? A. Yes, sir.

X-Q. Where did you say you had seen him before? A. I didn't say I had.

X-Q. You didn't say you saw him? A. No, I didn't say I saw him before.

X-Q. Did he tell you who sent him there? A. He did not.

X-Q. Did you ask him? A. No, sir.

X-Q. Weren't you curious about why he should pick your farm? A. No, sir. I wasn't curious. I had rented buildings before.

X-Q. You had rented buildings before. When before? A. The garage that exists on our property, I rented it before.

X-Q. When before? A. The season before.

X-Q. When was that specifically, what month? A. November, December, January, February of the year before.

X-Q. What year is the year before? A. Before what, sir?

X-Q. I am asking you when you rented the garage what months did you rent it for? A. I rented the garage in 1952 and 1953.

X-Q. To whom did you rent it? [404] A. I rented that to the people who live on the opposite side of the street from me.

X-Q. And their names are what? A. Noonan and Spotwood.

X-Q. Would you come down and point out the garage, if you will, on the chalk? A. Yes, sir.

[Witness leaves the witness stand and goes to the plan affixed to the blackboard.]

A. That would be this garage.

X-Q. That is the garage on the road there? A. Yes, sir.

X-Q. Would you resume the stand? A. Yes.

[Witness returns to the witness stand.]

X-Q. That is Mossman Road? A. Yes, sir. That is on Mossman Road.

X-Q. How big a building is that? A. I didn't hear your question, sir.

X-Q. How big a building is it? A. How big?

X-Q. Yes. A. 17 by 22.

X-Q. 17 by 22? A. Yes, sir.

X-Q. You rented it to two people? [405] A. Yes, sir.

X-Q. For the storage of their cars? A. Yes, sir.

X-Q. What other buildings on the premises did you rent? A. I had rented this ranch house previously.

X-Q. To whom had you rented it? A. I had rented that to a family by the name of Longo.

X-Q. When did you rent it? A. 1951 and 1952.

X-Q. 1951 and 1952? A. Yes, sir.

X-Q. The Longos live where? A. When?

X-Q. Presently. A. I don't know, sir.

X-Q. When is the last time you have seen them? A. I haven't seen them since I asked him to move out of the building.

X-Q. Did you rent the apartment furnished? A. To them?

X-Q. Yes. A. No, sir.

X-Q. What were the terms of the agreement with them? A. $30 a month for the apartment.

X-Q. And the apartment consisted of what? [406] A. It is a 3-room apartment.

X-Q. 3-room apartment? A. Yes, sir.

X-Q. What facilities were provided? A. There was a toilet in the house. They had water.

X-Q. They had water? A. Yes, sir.

X-Q. Where did they get the water from? A. They got the water from the main barn.

X-Q. From the main barn? A. Yes, sir. There was a l-

inch pipe line that came from the main barn to this building.

X-Q. All right. Electricity? A. The electricity came from the main barn.

X-Q. Was that the underground cable? A. No, sir.

X-Q. How did it get there? A. What?

X-Q. How did it get to the barn, from the barn to the ranch house? A. There were overhead wires.

X-Q. When were they installed? A. The overhead wires?

X-Q. Yes. A. They existed from the time I got this barn.

X-Q. In 1953, sir, didn't you call the electric light company and [407] have them come down to install poles for overhead wires? A. No, sir.

X-Q. You did not? A. No, sir.

X-Q. In 1954 did you? A. No, sir.

X-Q. Would you say that no poles and no overhead wiring were brought in from the street to this ranch house, so-called, in 1954 or 1953? A. I wouldn't say that, sir.

X-Q. Would you say there weren't any wires brought in and were no poles? A. There definitely were wires and poles brought in there.

X-Q. When were they brought in? A. 1953.

X-Q. When in 1953? A. I couldn't tell you right offhand.

X-Q. Did they replace other ones going in there at that time? A. Replace others?

X-Q. Replace others. A. No, sir.

X-Q. That is the first time the wires were brought into the building, isn't that true? A. That is the first time the wires were brought in.

X-Q. Were brought into the building or to the building? [408] A. New service you are talking about?

X-Q. I am asking you. A. I don't know what you are asking me.

The Court: Mr. Witness, you have testified that you rented this apartment for 1951 and 1952?

The Witness: Yes, sir.

The Court: Did the electric light wires come in in 1953?

The Witness: Yes, sir.

The Court: Weren't there any there in 1951 and 1952?

The Witness: Yes, sir. But my brother ordered the wires in when he was living there. He ordered the poles in there. So that he would have a separate service.

The Court: I didn't ask you that.

The Witness: I'm sorry, sir.

The Court: We will take a recess.

[Recess.]

X-Q. Did you, sir, make an application for a new service for this building you call a ranch house some time in 1953? A. I didn't, sir.

X-Q. Who did? A. My brother.

X-Q. Do you recall when he did? A. When he was living there in 1953.

X-Q. When did he make the application? [409] A. I would say July or August of 1953.

X-Q. You had some talk with him about it, didn't you? A. Do you want me to give the talk?

X-Q. Can you understand my question? A. Yes.

X-Q. Did you have some talk? A. Yes.

X-Q. You did? A. Yes.

X-Q. And at that time did the house have electricity? A. It did, sir.

X-Q. Where did the current come from, where did the wires come from? A. From the cow barn.

X-Q. From the cow barn. Were poles erected and were there wires attached to these poles in response to the application for new service? A. Yes, sir.

X-Q. Was this ever connected? A. Never, sir.

X-Q. Would you come down here to this chalk, if you will, please? A. Yes, sir.

[Witness leaves the witness stand and goes to the plan affixed to the blackboard.]

X-Q. Would you point out the ranch house? You are calling this [410] a ranch house. Would you point it out? A. Here [indicating].

X-Q. And the cow barn? A. Here [indicating].

X-Q. How far would you say it was from the cow barn to the ranch house? A. About 75 feet.

X-Q. Did you testify that you could not see the cow barn from the ranch house or the ranch house from the cow barn? A. I didn't say that.

X-Q. I can't hear you. A. I did not say that, sir.

X-Q. Can you see the ranch house from the cow barn? A. Yes, sir. You can see parts of the ranch house from the cow barn.

X-Q. Can you see the cow barn from the ranch house? A. Yes, sir.

X-Q. Is there some sort of road running directly from this barn marked hay barn, which is the cow barn, is it not? A. The hay barn will be the second floor structure. Under here is a cellar-like affair for the cows.

X-Q. Is there a road away from the cow barn to the ranch house? A. This road exists and goes right to there. Part of the road goes up around there. The other goes right down here [indicating].

X-Q How far is it, sir. from the main house, the main farm house, [411] to the cow barn? A. 100 feet, 200 feet.

X-Q. What is your best estimate as to the distance? A 150 feet.

X-Q. 150 feet? A. The two closest points.

X-Q. And from the main house to the ranch house? A. Pretty near 400 feet.

X-Q. You would say 400? A. Pretty near that, sir.

X-Q. You did keep pigs at the farm? A. Yes, sir.

X-Q. Were they in an enclosure of some kind? A. Yes.

X-Q. What type of enclosure? A. We have a pig building, and we have a fenced-off area for the pigs.

X-Q. When was the building erected? A. When?

X-Q. Yes. A. The summer of 1952.

X-Q. Would you point it out? A. It doesn't show on the map. It is up on the top of the hill.

X-Q. Up on top of the hill, an extension of this road here, do you mean? [412] A. Yes, sir.

X-Q. This is what, sir? A. A pond.

X-Q. Where in relation to the ranch house is that pond direction-wise? A. Standing in back of the pond this barn would be — this pond would be in back of the barn off to the left.

X-Q. What did you use the pond for? A. I used this pond for irrigation and for water supply.

X-Q. What did you irrigate? A. The fields. This is all fields, all down in here [indicating].

X-Q. And it grew what? A. Corn, mostly corn.

X-Q. Did you run any connection from this pond to the ranch house at any time? A. No, sir.

X-Q. Did you run any connection from that pond to any place except to the field to your irrigation? A. Yes, sir.

X-Q. Where? A. I ran, when we ran out of water in a culvert that is down in here, a cement culvert, we pumped that out of water, I connected it up to this pond to get a water supply for the pigs.

X-Q. Which were on top of the hill here? [413] A. Yes.

X-Q. Where was the culvert you were supplying the pigs water from? Would you point out the culvert? A. In this area here [indicating].

X-Q. How far from this area is it to the area in which the pigs were kept and the building? A. 500 feet?

X-Q. Keeping in mind this is 400 feet from the ranch house to the main farm house and the culvert is here, sir, is it not? A. Yes, sir.

X-Q. You say it is 500 feet. Do you still say 500? A. About that, sir. I can't be sure. I did not measure the area at all.

X-Q. How far from the main farm house is the pig building and the enclosure? A. Oh, I guess it is quite a way, maybe 700 feet, maybe a thousand feet.

X-Q. Which is it closest to? A. I wouldn't dare say, sir.

X-Q. This is the main farm house? A. Yes, sir.

X-Q. Would you point out again the culvert, if you will? A. Here [indicating].

X-Q. Could we have the distance from the culvert to where the pigs are kept again, to the best of your recollection? [414] A. I don't like to be wrong about it, but I would want —

The Court: Give us your best estimate.

A. Oh, maybe six or seven hundred feet, anyway. It is cross-country.

X-Q. Would you resume the stand? A. Yes, sir.

[The witness returns to the witness stand.]

X-Q. You told us you were making or setting up a garbage cooker? A. Yes, sir.

X-Q. When did you build this? A. The late fall and early winter of 1953.

X-Q. Would you describe what the rig was that you erected? A. Yes, sir. I had an old open iron tank.

X-Q. Could we have the dimensions? A. 4½ feet wide, 4 feet deep, 9 or 10 feet long.

X-Q. A rectangular tank, was it not? A. Yes, sir.

X-Q. Would you go on and describe the rest of the rig? A. This was going to be my —

X-Q. What was it? Would you describe it? A. This was my garbage tank. I set this up on blocks, and I dug out

underneath it, and I built a fire box. I was going to use this to cook garbage for the pigs.

X-Q. It had a tank underneath the pit? A. It had no tank.

[415] X-Q. A tank over a pit? A. Tank over the pit.

X-Q. How did you fire it? A. I fired it with tires?

X-Q. Tires? A. Yes, sir.

X-Q. You say you started to erect this at what time? A. The late fall or early winter of 1953.

X-Q. That would be in November? A. Yes, sir.

X-Q. When did you begin cooking garbage in it? A. I began as soon as I put the first tire under it.

X-Q. That was when? A. December of 1953.

X-Q. Did you use water in cooking this garbage? A. Yes, sir.

X-Q. How did you get the water into the tank? A. I pumped it up.

X-Q. How? A. With the pump.

X-Q. From where? Where did the water come from? A. Originally it came from the cow barn, and after that, when I didn't have a source there any more, I started pumping it from the pond.

X-Q. You had a tank in the cow barn? [416] A. Yes, sir.

X-Q. How big a tank did you have? A. A thousand gallon tank.

X-Q. You pumped it from there up to the cooker? A. Yes, sir.

X-Q. And you say some time after that you pumped it directly from the pond? A. Yes, sir.

X-Q. Didn't you tell us a few minutes ago the only time you used the pond was for irrigation? A. No, sir. I told you I used the pond for irrigation, and then when my culvert went dry I had to put a pipe over in that pond to get the water supply for my pigs.

X-Q. You ran a pipe from where to where? A. I ran a pipe from that pond to the piggery.

X-Q. And the approximate date of the running, that was when? A. December of 1953.

X-Q. When was it required to cook garbage in this State? A. There were two laws passed, one a Federal law and one a State law.

X-Q. When was the first one passed? A. The first one? You were required to have a cooker back in about September of 1953.

X-Q. Are you sure of that? A. No, I am not sure of it, sir. I don't have a copy of the [417] law, but it is right around that time.

X-Q. So in December you started to cook your garbage? A. I tried out this garbage cooker that I made.

X-Q. How long did you try it out? A. I tried it out possibly on two different occasions to find out whether it would work or not.

X-Q. Did you later adopt something else? A. Yes, sir.

X-Q. You told us you were going to school in October of 1953, did you not? A. Yes, sir.

X-Q. That you were going to Suffolk University? A. Yes.

X-Q. What type of course were you taking? A. Prelegal, sir.

X-Q. What were your courses? A. I couldn't tell you offhand, sir.

X-Q. You have no memory as to the courses you were taking? A. I don't have any memory now as to the courses I took. I have had a lot of courses since.

X-Q. You were going to school on February 24, 1954, at Suffolk University? A. Was I going? I was still enrolled at Suffolk.

X-Q. Did you attend school on that day? A. On that day? No, sir.

[418] X-Q. Did you attend school any day in February of 1954 at Suffolk University? A. I don't believe, so, sir.

X-Q. When was the last time in 1954 you went to Suffolk University? A. When the semester closed.

X-Q. When did it close? A. The end of May.

X-Q. Were you going to school in January of 1954 at Suffolk University? A. Yes, sir.

X-Q. How many days in January did you go, do you recall? A. I couldn't tell you, sir.

X-Q. You have no memory? A. I don't remember, sir.

X-Q. But you remember that you did not go in February? A. On that particular date you told me.

X-Q. At any time in February did you attend Suffolk University? A. I couldn't tell you one day from the other in February.

X-Q. You withdrew, did you not, from Suffolk University? A. No, sir.

X-Q. You did not withdraw? A. I didn't withdraw, sir.

X-Q. Was there some time when you stopped going there in 1954? A. Yes.

[419] X-Q. What day was that? A. I don't have the date, sir.

X-Q. Do you recall when the semester in the Fall of 1953 ended? A. No, sir.

X-Q. You have no memory whatsoever when that ended? A. No.

X-Q. Do you remember whether or not you had a Christmas vacation that year? A. Yes, sir.

X-Q. Do you remember when examinations were held that year? A. Yes, sir.

X-Q. When were they held? A. At the end of the semester.

X-Q. When was that? A. I don't know, sir.

X-Q. Would it be fair to say the semester ended on

January 10th? A. I couldn't help you, sir. I don't know when they ended.

X-Q. Didn't you tell us you were going to school every day from October of 1953 to Suffolk University? A. From October?

X-Q. From October of 1953, that you were going to school? A. I went to school from 1951, summer, fall, winter, right straight through, sir.

X-Q. To when? A. To 1954.

[420] X-Q. When in 1954, I ask you again, did you stop going? A. May.

X-Q. You want to say now that you went in January and February, and March, of 1954? A. I attended the school, sir.

X-Q. As a regularly enrolled student in February of 1954? Do you want to say that? A. As far as I know, I was, sir.

X-Q. Are you still going there now? A. No, sir.

X-Q. You say you stopped in May of 1954? A. That was what ended the semester. I attended after that, I think, too.

X-Q. What were you attending after the semester ended? A. What is that?

X-Q. What were you attending after the semester ended? A. I don't know what you're getting at. I went to Suffolk University some more.

X-Q. When did you finally stop going there? A. I don't remember now, sir.

X-Q. Do you recall what your marks were in May of 1954? A. No, sir.

X-Q. Are you trying to remember? A. No, sir.

X-Q. You are trying not to remember? [421] A. No, sir.

X-Q. Would you stop and reflect a minute and tell us what your marks were, and what courses you had, in May

of 1954, what grades you received? A. I couldn't tell you, sir.

X-Q. You can remember one course, can't you? A. What is that?

X-Q. Can you remember one course? A. Can I remember one course?

X-Q. Yes. A. I can't remember right now, sir.

X-Q. Not one single course? A. You got me all scared. I can't remember.

X-Q. You told us you took trips during the Fall and Winter to Canada? A. Yes, sir.

X-Q. How many trips did you take? A. Possibly three or four.

X-Q. How much hay would you bring down on a load? A. 45 tons.

X-Q. You said you got it in the Province of Quebec? A. Yes, sir.

X-Q. Where in the Province of Quebec did you purchase the hay? A. St. Hughes, St. Lo, outside of Drummondville, 60 or 65 miles.

[422] X-Q. From whom did you purchase it? A. Direct from the farmers.

X-Q. Give us the name of one farmer you purchased it from. A. I am not trying to be smart with you, sir, but we are talking about four years ago. I've got three trailer trucks running now. I do business with individuals up there. I buy possibly 75 to 100 tons of hay a week. Each load of this stuff comes from a different individual, and I couldn't possibly tell you what the farmer's name is up there. I've got all I can do to buy the hay. I don't speak French. They are all French-speaking people up there.

X-Q. Is there any more you want to tell us about this? A. About the hay business?

X-Q. Yes. A. I can tell you everything about the hay business.

X-Q. You paid for this hay, did you not? A. Yes.

X-Q. You kept books and records of it? A. Yes.

X-Q. You have gone over this period from 19 — well, the latter part of 1953 and 1954 with your attorney, have you not? A. Yes, sir.

X-Q. You have tried to remember what you did each and every day during this time, what occupied your time? A. Yes, sir.

[423] X-Q. Didn't you review the records of what hay you had bought in Canada during this time? A. No, sir.

X-Q. Didn't you review your school records, how long you were at school and for what hours? A. No, sir.

X-Q. Did you testify that your father did no work on the farm? A. My father putters around. My father is retired because of disability.

X-Q. Would you say your father never milked the cows on the farm? A. My father never milked a cow in his life. My father, if you sat down and you were to give him a thousand dollars, he couldn't milk a cow.

X-Q. You're positive of it? A. Positive, sir. I couldn't be more positive of anything.

X-Q. Would you say Gerald milked cows on the farm? A. I would say Gerald could milk a cow.

X-Q. In December of 1953 who was in charge of the milking? A. I was, sir.

X-Q. Who did the milking? A. I did, sir.

X-Q. Did Gerald do any milking then? A. If I took a trip, he might have milked for that particular time.

X-Q. You did all the milking? [424] A. Yes, sir.

X-Q. What time did you milk? What time of day can you milk the cows? A. From 5 to 8 in the morning, and possibly from 5 to 8 at night.

X-Q. That was a regular duty? A. A regular chore.

X-Q. Gerald had no steady job there milking the cows? A. No, sir.

X-Q. You have told us you spent some time in the ranch house fixing it up? A. Yes, sir.

X-Q. When did you first start to fix up the ranch house? A. When we first purchased the farm. That was the only livable quarters on the whole farm, when we first bought it, the little ranch house.

X-Q. You fixed it up at that time to live in it? A. No. We did little things there from time to time, nothing ever big, or big overall remodelling jobs.

X-Q. When did you first start to do something in remodelling it? A. We never really did anything in remodelling on that particular building.

X-Q. When did Gerald come to live there? A. Gerald started to live in that building about April or May of 1953. [425] X-Q. You are sure Gerald was living in that building, not in your mother's home? A. No, sir, I'm not sure.

X-Q. He may have been living in your mother's home? A. He might well have been. As a matter of fact, you are right. He was living in my mother's home.

X-Q. He was not living in the ranch house? A. He wasn't living in the ranch house.

The Court: You mean he never lived there?

The Witness: Yes, he did live there, sir. He started living there when his wife came home from the hospital with their little baby. They wanted to be by themselves.

X-Q. He lived there after the seizure? A. Yes, sir.

X-Q. Now you told as about a short circuit in the electrical system on the farm? A. Yes, sir.

X-Q. When did that happen? A. To the best of my knowledge —

X-Q. When did it happen? Everything is to the best of your knowledge. A. October, 1953.

X-Q. October of 1953? Was the farm without electricity at that time? A. The farm was not. The barn was.

[426] X-Q. The barn was. The farm was not? A. That's right.

X-Q. How long was the barn without electricity? A. 20 minutes.

X-Q. What were the extent of the repairs after the short circuit? A. We run a cable from my mother's house down to the milking machines so we could keep milking the cows.

X-Q. This cable was obtained where? A. The new cable?

X-Q. Was this a new cable you bought? A. No, an extension cord?

X-Q. Extension cord? A. Yes, sir.

X-Q. It ran from your mother's house? A. Yes, sir.

X-Q. Where did you connect it into your mother's house to run it to the barn? A. Into an outlet.

X-Q. An ordinary wall socket? A. Yes, ordinary wall socket.

X-Q. You ran it down to the barn? A. Yes, sir.

X-Q. About how many feet of cable did you have? A. A couple of hundred feet.

X-Q. You ran that into what in the barn? [427] A. We ran that in through the window of the barn and attempted to hook up the milking machines to it.

X-Q. Well, did you hook up the milking machines to it? A. It wouldn't turn it over.

X-Q. What did you do then? A. We milked by hand.

X-Q. You milked by hand? A. Yes.

X-Q. Who is "we"? A. I did.

X-Q. Alone? A. No. I might have had Gerald with me at that time.

X-Q. Did you or didn't you? A. I believe I did.

X-Q. How long did it take you to milk by hand? A. 2½ hours apiece.

X-Q. When did you correct this, if you did? A. I went down to the Watertown Electric and I told them my trouble,

and the machinery that I wanted to run, and about not being able to run the overhead wires, that it had to be underground cable again.

X-Q. My question is: When did you correct this, if you did? A. Two days later.

X-Q. You are sure this was in October? A. I am not positively sure. It was right around that time.

[428] X-Q. It could have been in January? A. No, sir.

X-Q. It could have been in December? A. No, sir.

X-Q. It could have been in November? A. Possibly.

X-Q. What size line did you have running from the barn to the pig building? What size water line did you have. A. 2-inch.

X-Q. What type of pipe did you say you ran up from the barn to the pig building? A. Black iron and plastic.

X-Q. When did you get this pipe? A. In the Fall of 1953.

X-Q. What had you been using prior to that? A. We had been loading water onto a truck or trailer and taking it up by the barrelful.

X-Q. In the fall of 1953 you changed and ran a direct line up there? A. Yes, sir.

X-Q. You have a record of those purchases? A. Yes, sir.

X-Q. Do you have them with you? A. No, sir.

X-Q. Where are they? A. They are home.

[429] You didn't think it important to bring them? A. No, sir.

X-Q. On February 23d, sir, were you milking cows on that day? Did you do any milking on the 23d? A. Yes, sir.

X-Q. What time did you milk in the morning that day? A. I started probably at 5:30.

X-Q. How many milking machines did you have? A. Two.

X-Q. You had how many cows? A. 55 or 60.

X-Q. You were there about what time? A. I got through my work about 8:00 o'clock or 8:15.

X-Q. Then what did you do? A. That particular day I think we unloaded hay.

X-Q. Don't you recall what you did on that particular day? A. No, I do not.

X-Q. Who is "we"? A. My brother and I.

X-Q. You unloaded hay from where? A. From the trailer truck.

X-Q. And you put it where? A. We put part of it in our own barn. Then we went out and made some deliveries.

X-Q. What time, approximately, did you go out and make deliveries? [430] A. About 10 o'clock until about 3.

X-Q. You returned to the farm at 3, did you not? A. Yes, sir.

X-Q. Then what did you do? A. Went in the house.

X-Q. What house? A. My mother's house.

X-Q. What did you do then? A. We looked to see if there was some coffee on.

X-Q. What did you do? A. We drank some coffee, my brother and I.

X-Q. After your coffee, what did you do? A. I asked if there was anything that had to be done to the trailer truck. He said, "Yes, we've got to have some of the lights hooked up."

X-Q. Some of the lights hooked up? A. Yes.

X-Q. Then what did you do? A. I said, "Take the truck down to Angie's," which is "Frost's Station, "and I will follow you down there."

X-Q. Did you go down then? A. Yes, sir.

X-Q. Was there any particular hurry in getting down to the station that day? A. No, sir.

[431] X-Q. Was there any need of going at an excessive speed or fast speed? A. No, sir.

X-Q. Would you say that you did not go down there at a fast speed? A. The same speed as always.

X-Q. What would that be, about? A. We moved right along.

X-Q. You move right along? A. Yes, sir.

X-Q. About what time did you get down to Angie's? A. Quarter of four, maybe four o'clock.

X-Q. You went down in a vehicle? A. Yes, sir.

X-Q. Gerald went down in the truck? A. Yes, sir.

X-Q. Whose vehicle did you go down in? A. Gerald's car.

X-Q. Did you own a car? A. No, sir. Now?

X-Q. At that time. A. Yes, sir.

X-Q. What was done to the truck? A. I spoke with —

X-Q. What was done to the truck? A. The lights were fixed on the truck. They weren't fixed [432] right then. He couldn't do it right then, so we left the truck.

X-Q. And returned to the farm? A. Yes, sir.

X-Q. What day was it, did you testify, that you rented this ranch house? On what day did you say you rented this ranch house? A. January 18th.

X-Q. 1954? A. Yes, sir.

X-Q. And the description of the fellow you rented it to is what? A. I told you he was dark complexioned.

The Court: What was his name?

The Witness: Joe Fuci. He was about 5 foot 6, and he had on an overcoat, a soft hat, and his clothes looked dirty or worn, worn-looking clothes.

X-Q. He wasn't a prosperous-looking man? A. No, no.

X-Q. You had some conversation with him? A. Yes, sir.

X-Q. What, exactly, was that conversation? A. I walked over to his car. I asked him if I could help him. He said he wanted to talk with the owner of the premises or of the place. I said that was me. He asked me if I had a build-

ing I could hire out for storage. I told him I had several. I pointed out the garage to him. I told him there was —

X-Q. That was the garage at the front, on Mossman Road? [433] A. Yes, sir.

X-Q. What other buildings did you point out to him? A. I told him there was another building down behind the cow barn, and there was another barn behind that again, to look them over himself to see if there was anything he could use.

X-Q. What did he say to that? A. He went down back.

X-Q. Down back? A. Yes, sir.

X-Q. You didn't go with him? A. No, sir.

X-Q. That is all the talk you had with him at that time? A. Yes.

X-Q. Did he later return? A. He did.

X-Q. What was the conversation then? A. I asked him if he found anything he liked. He said he was interested in the building behind the cow barn.

X-Q. Go on with the conversation. A. And he said he could use that for storage. I asked him, "Storage of what?" He told me, "Machinery."

X-Q. Go on with the conversation. A. I told him I had to have $25 a month for that building, that that building was only available for four or five months. He told me that would be all right.

[434] X-Q. What else did you say or did he say? A. Well, I said, "How soon did you want to get the building?" He said, "Right away." So he pulled out his money, and I got a piece of paper and gave him a receipt for it.

X-Q. What money did he pull out? A. He took out his wallet. He took out two tens and a five, $25.

X-Q. Did you have any more conversation with him? A. "Thanks a lot. I'll see you later."

X-Q. You never saw him again? A. I never saw him again, sir.

X-Q. Were you at all curious as to what was to be stored in that building? A. I didn't have time to be curious. I wished I had.

X-Q. This was January 18th? A. Yes, sir.

X-Q. What were you doing during the day of January 20th in between the times you were milking the cows? A. I don't know, sir.

X-Q. The 25th? A. I could not tell you.

X-Q. Can you tell us what you were doing during the day, any day after January 18th until February 24th, in between the times you [435] were milking cows? A. Could I?

X-Q. Yes. A. If I could see my manifest from Canada, from crossing over the border, I could give you the times and the dates I was away from home and how long I was away from home, and that kind of business.

X-Q. Apart from the times you were going to Canada, can you tell us what you were doing during that day? A. If I had my school record and saw my courses, I could probably tell you what I did.

X-Q. Didn't you check your records at school to determine what days you were at school and what days you were not at school? A. I didn't think it was necessary, sir.

X-Q. You didn't think it was necessary? A. No, sir.

X-Q. Didn't you testify that from October on, you were at school all the time during the day? A. Yes, sir.

X-Q. Do you now want to say you were at school all the time during January and February during the day? A. I don't want to say that, sir.

X-Q. As a matter of fact, in February you know you were not at school, don't you? A. No, I don't know that, sir.

[436] X-Q. You had looked at Government's Exhibit 8-C, the connecting valve? A. Yes, sir.

X-Q. Did you buy a connecting valve at some time? A.

I bought a valve very similar to one of the ones over there.

X-Q. The same type? A. Yes, sir.

X-Q. What size is that? Go down and look at it, if you would like.

[Witness leaves the witness stand and goes to the side of the court room.]

A. It looks like a 2-inch valve.

X-Q. Would you look at the other valves and tell me what size that one is? A. 2-inch valve, too.

X-Q. All right.

[The witness returns to the witness stand.]

X-Q. Where did you buy the connecting valve? A. Waltham Supply.

X-Q. When? A. It could be the Fall or early Winter of 1953.

X-Q. And the purposes of buying it was for what? What did you buy it for? A. I bought it for my pumping system.

X-Q. Running water from where to where? [437] A. Running water to the piggery.

X-Q. From where? A. From the big cow barn.

X-Q. From where? A. From the big cow barn.

X-Q. You say you subsequently sold the valve like that? A. Yes.

X-Q. When did you sell it? A. About a year and a half or two years ago.

X-Q. When did you get rid of the pigs? A. March or April of this year.

X-Q. Yet you sold this valve about a year and a half ago? A. Yes, sir.

X-Q. You told us who you sold it to? A. Yes, sir.

X-Q. Is he here in court now? A. Yes, sir.

X-Q. You got a receipt for that, did you not? A. I didn't get a receipt for it, no, sir.

X-Q. You say you purchased the other type valve there, Government's Exhibit 8-D? A. Yes.

X-Q. Did you buy that about the same time? A. Yes, sir.

X-Q. And its use on your farm was what? What was it used for? A. I used it over in the quarry.

X-Q. When did you first acquire an interest in the quarry? A. I have been interested in that quarry since about 1952.

[438] X-Q. When did you first acquire an interest? You have machinery there? A. Yes, sir.

X-Q. When did you first put machinery there? A. About 1952.

X-Q. And the machinery was to do what? A. It's a granite quarry. It's for making granite from the base material, granite, for making granite by-products.

X-Q. Are you alone in that endeavor? A. No.

X-Q. Who is with you? A. There is a fellow in New York in it with me.

X-Q. A fellow in New York? A. Yes, sir.

X-Q. He is not here today? A. No, sir.

X-Q. What is his name? A. John Viaggio.

X-Q. When did you first meet him? A. In 1952.

X-Q. Do you have his New York address? A. Yes, sir.

X-Q. Could you give it to us? A. I don't know if I have it on me. I will look.

X-Q. Is he a partner of yours? A. We are not exactly partners.

[439] X-Q. You are not partners? A. Not exactly partners.

X-Q. What is the arrangement? A. The arrangement is that we get together, and if we get an order for granite, he takes care of selling it and I take care of making sure the cutters get there, that they cut it out, and then I make sure their time goes back to him, that the machinery keeps running, that kind of business.

X-Q. What is the name of the business? A. North Acton Granite Company.

X-Q. Do you own it? A. No, sir.

X-Q. Who owns it? A. John Viaggio.

X-Q. Could we have his address again? A. I didn't give it to you.

X-Q. Could we have it? A. I do have his address. I don't believe I have it on me. I would have to go through a lot of cards.

X-Q. Do you have the cards on your person? A. I might have.

X-Q. Well, would you look? A. Yes, sir. [A pause]. Do you want his office number?

X-Q. I want his address.

Mr. Toltz. Give him everything you have got.

[440] A. He's an attorney-at-law. His business address is 274 Madison Avenue.

X-Q. 274 Madison Avenue. That is his business card? A. Yes.

X-Q. He is an attorney-at-law? A. Yes, sir.

The Court: Madison Avenue, New York?

The Witness: Yes, sir.

X-Q. Is that his card there?

Mr. Toltz: Give him the card.

A. Yes, sir. [Handing card to Mr. Lewald.]

X-Q. 274 Madison Avenue, New York City 16, New York. Is this his telephone number: Murray Hill 5-3038? A. I believe so, sir.

X-Q. Well, have you ever called him? A. Yes, sir. I also have his home address and home number.

X-Q. Do you have it here? A. No, sir.

X-Q. Whereabouts in West Acton is this? A. North Acton. You tave Route 27.

X-Q. Can you give us the address of it? I asked you where it was. A. Quarry Road, North Acton.

X-Q. Does it have a number? A. I don't believe so, sir.

X-Q. In 1953, were you making any deliveries from that quarry? [441] A. Yes, sir.

X-Q. You kept records, did you not, of the quarry? A. Yes.

X-Q. Do you keep the records personally? A. No.

X-Q. Who does? A. I believe Mr. Viaggio does.

X-Q. Who would order gravel from the quarry? A. What?

X-Q. Who would order gravel or granite chips from the quarry? A. John Viaggio's father is in the mason business in New York. His father was the main buyer of the stone we produced. I did basically trucking of this granite to New York and he maintained the machinery over there.

X-Q. What type of granite did you truck to New York? A. A type of granite known as gray Ashler.

X-Q. Gray Ashler ? A. Yes.

X-Q. It was in what state when you brought it to New York? A. It is all cut stone. It is ready to put on the buildings.

X-Q. When was the last time after February 24th of 1953 you made a trip to New York with this granite? A. It would be about October of 1956, October or November of 1956.

X-Q. Before February 24th, 1953, when was the last time you made a trip? When was the time immediately prior or closest to February [442] 23d, 1954, that you made a trip to New York with this granite? A. I couldn't say, sir.

X-Q. Did you ever make a trip prior to that? A. Yes.

X-Q. What is your best estimate to to the time? A. That my truck went, or myself?

X-Q. That you went. A. I did not go.

X-Q. You didn't go prior to then? A. I didn't go.

X-Q. Who is currently working at the quarry? A. Nobody.

X-Q. When was the last time anybody has been employed there? A. Pretty near a year.

X-Q. Who was last employed there? A. I couldn't say that.

X-Q. You don't know his name? A. No, sir. I don't know who the last one was there.

X-Q. In February of 1953, who was employed at the quarry? A. I couldn't tell you that, either.

X-Q. You knew who was there? A. I knew them by just taking their name.

X-Q. Didn't you pay them? A. No, sir.

X-Q. Were you paid? [443] A. For my work?

X-Q. Yes. A. Absolutely.

X-Q. How were you paid? A. By check.

X-Q. Do you recall what bank the check was drawn on? A. No.

X-Q. How much were you getting? A. For my trucking?

X-Q. For what you did there. You told us what you did. You were in general supervision of the place? A. I told you that my main job was trucking the granite, and that I helped out on the maintenance of the machinery.

X-Q. Did you receive a regular salary for that? A. No, sir.

X-Q. Did you submit time sheets that were on it? A. No.

X-Q. How were you paid, on what basis? A. On the load basis. We were trying to get the business going. We weren't milking the business out.

X-Q. What interest did you have in the business? A. The more business done, the more trucking we did. It was a good business. It was good business for us.

X-Q. I show you Government's Exhibit 3. I ask you whether or not that is a fair representation of the buildings on the farm? [444] A. It doesn't take in all the buildings.

X-Q. Well, the buildings that it does take in. A. Yes, sir.

The Court: We will recess here until 2 o'clock.

[Recess.]

[445] AFTERNOON SESSION

ROBERT E. QUIRK, *Resumed*

Cross Examination by Mr. Lewald, Continued

X-Q. I show you Government's Exhibit 4 and ask you if you would look at it. I ask you now whether or not it is a fair representation of the buildings depicted on your farm? A. Yes, sir.

X-Q. Your answer is what? A. Yes, sir.

X-Q. I show you Government's Exhibit No. 5-I, and I ask you if you can identify this white area here in the middle of the picture? A. Yes, sir.

X-Q. What is it? A. Water.

X-Q. Where on your farm is it, if you know? A. That would be the green pond.

X-Q. The green pond? A. Yes, sir.

X-Q. What is this building on the extreme right of Exhibit 5-I? A. That would be the calf barn.

X-Q. The building on the extreme left? A. That is the chicken house.

X-Q. This broken piece of pipe here, that leads to where, in what direction from the farm does it go or from the pond does it go? [446] A. I don't believe —

X-Q. You don't know where it goes? A. I don't follow you.

X-Q. Where does this pipe lead from as it is going toward the pond? A. It goes to the pond.

X-Q. Where does the other end of it go? A. To a culvert.

X-Q. Where? A. To a culvert.

X-Q. To a culvert? A. Yes, sir.

X-Q. How does it get from the pond to the culvert? A. It takes an overflow.

X-Q. Gravity? A. That's right.

X-Q. Does this picture show the culvert? A. It can't show it. The culvert is underground.

X-Q. Where does the culvert run, from where to where? A. I could show you better on the map.

X-Q. Would you point it out?

[Witness leaves the witness stand and goes to the map affixed to the blackboard.]

A. The culvert would be located right about in here [indicating].

X-Q. Where? Would you point out from one end to the other of [447] the culvert, both extremes, from one end to the other of it? A. It runs lengthwise with the road.

X-Q. Where does it start and where does it end? A. It's a tomb affair 14½ feet long, 4 feet wide, 4½ feet wide, underground.

X-Q. It is built there to run a road over? A. No, sir. It is not across the road. It is alongside the road.

X-Q. What leads into it? A. There is one pipe to take the overflow from it, so it won't keep running all over the ground in the road, and up at the other end underground is a foot valve for the cow barn.

X-Q. I show you Government's Exhibit 5-K, and I ask you whether or not you can identify it? A. Yes, sir.

X-Q. What is it? A. This would be the kitchen of the ranch house.

X-Q. Will you look at the clothing on the chair? A. Yes.

X-Q. Could you identify the clothing? A. I can't identify it, sir.

X-Q. Have you ever seen that clothing before? A. I don't know, sir.

X-Q. Have you ever seen this container, Ajax? A. No, sir.

X-Q. And these tools on the table, have you ever seen those before? [448] A. No, sir.

X-Q. You went through these premises on February 23d? A. Yes, sir.

X-Q. Did you see the clothing there at that time? A. No, sir.

X-Q. You did not? A. No, sir.

X-Q. I show you Government's Exhibit 5-L. I ask you whether or not on the 23d you saw those cans in the ranch house? A. Those cans?

X-Q. Is that a fair representation of what you saw in that room in the ranch house? A. Sir, that night I couldn't tell you what I saw. It was dark in there. There were men all over the place. I saw some cans around there. I had one agent tell me that it was alcohol in the can. As far as seeing this exact replica of it, I couldn't say that I saw it.

X-Q. There was no light in the building? A. I don't think there were any lights in the building, sir.

X-Q. The agent, did he take you through a dark building without any lights? A. They had flashlights and torches.

X-Q. Was there any electricity turned on? A. I don't know, sir.

X-Q. Do you recall whether or not the building had lights? [449] A. I don't remember.

X-Q. I show you Government's Exhibit 5-M. I call your attention to this piping. I ask you whether or not you can identify that piping as to its size? A. I can't identify the piping as to its size.

X-Q. Did you see it on February 23d? A. I can't say that I did.

X-Q. Were you shown through the room in the cellar of this building? A. I was taken through the cellar, but just into it, upstairs, and then into the bathroom. I didn't go

all through it. They just showed me there was a lot of stuff in there.

X-Q. When was heat put into that building for the first time? A. We put a Coleman floor furnace in there.

X-Q. A what? A. A Coleman floor furnace in that building, in October of 1954.

X-Q. In October of 1954? A. Yes, sir.

X-Q. That is the first time heat was put in the building? A. A floor-type heater, yes.

X-Q. Was there any heat in the building prior to October of 1954? A. A kitchen stove.

X-Q. A kitchen stove? A. Yes, sir.

X-Q. When was that put in? [450] A. That was put in when we first moved to the farm.

X-Q. When you first moved to the farm what type of stove was that? A. A white range oil-burning stove.

X-Q. You burned oil there? A. Yes.

X-Q. When was that removed from the premises? A. When was it removed?

X-Q. Yes. A. I don't believe it was removed from the premises.

X-Q. It is still there, is it? A. No, sir.

X-Q. Well, did somebody take it away some time? A. Yes, sir.

X-Q. When did they take it away, whoever did? A. My brother decided that the oil heat smoked up too much in there, so we put the floor heater for heat in, and he has an electric stove in there now

X-Q. When did he take out the oil burner, if he did? A. I would say about October of 1954.

X-Q. October of 1954? A. I believe so.

X-Q. He removed the oil burner? A. And put an electric stove in there. The stove is still thrown in the back part of the building. It was just picked up [451] and moved into another room. It is still there.

X-Q. Do you recall buying an electric stove from a Mr. Barber? A. Yes.

X-Q. Do you know when you bought that? A. Not exactly, sir.

X-Q. Well, to the best of your memory, when did you buy it? A. We bought that the end of December, the first part of January, somewhere in there.

X-Q. What year? A. 1953 and 1954, right in about that time.

X-Q. That replaced the oil stove? A. It did not replace it until the following October.

X-Q. Where is the kitchen located in the premises, as you open the front door or the outside door? A. You walk right into the kitchen.

X-Q. You walk right into the kitchen? A. Yes.

X-Q. Where is the chimney for the kitchen? A. Your chimney for the kitchen would be on your left, right here in the wall.

X-Q. In the wall? A. It is in the wall.

X-Q. Whereabouts in the house, the front wall, the back or the middle or where? A. The front wall.

[452] X-Q. Are there any other chimneys in the building? A. No, sir.

X-Q. There aren't? A. No, sir.

X-Q. If somebody put a chimney in there, you would have recognized it, would you not? A. If somebody put a chimney—?

X-Q. If somebody built a chimney in the back of the house, you would spot or recognize it? A. I should think so.

X-Q. I show you Government's Exhibit 5-G. I ask you what that picture represents. What building is that? A. This is the ranch house.

X-Q. What view of the ranch house? A. From the back end of the ranch house.

X-Q. Looking at the roof, this object here is what, sir? A. It looks like a chimney, part of it.

X-Q. It looks like a chimney? A. Like part of a chimney.

X-Q. I show you Government's Exhibit 5-H. I ask you what this object is here in the middle of the roof on the back side? A. I can't make that out.

X-Q. You cannot make it out? A. No.

X-Q. Do you want to say it is not a chimney? [453] A. No, sir.

X-Q. Who built that chimney? A. I don't know.

X-Q. Is this the first time you have ever noticed the chimney? A. That's the first time I have ever seen that chimney.

X-Q. How long have you lived at the farm, since 1950? A. That's right.

X-Q. You have never seen that chimney before? A. To this day I have never seen this chimney.

X-Q. When is the last time you have been in the ranch house? A. Yesterday.

X-Q. When was the next time after February 24, 1954, you were in the ranch house? A. I don't know, sir.

X-Q. Did you go in the next week after the Federal officers had seized the things in the building? A. Yes, sir.

X-Q. When, exactly, after the seizure did you go into that house? A. After the Federal agents left.

X-Q. How soon after they had left? A. As soon as the property was returned to me.

X-Q. You made some inspection in there, did you not? A. Yes, sir.

X-Q. Did you remove any articles from inside the building? A. Remove any articles?

[454] X-Q. Did you take anything out of the building? A. Yes, sir.

X-Q. What did you take out? A. All the debris that was left in there.

X-Q. Did you take some pipe out? A. Did I? No, sir.

X-Q. Did you take any valves out? A. No, sir.

X-Q. Did you take any tanks out? A. No, sir.

X-Q. Any oil tanks? A. No, sir.

X-Q. Did you take any vats out? A. No, sir.

X-Q. What did you remove? A. There were all kinds of cans and rubbish and trash and everything, all thrown around all over the place there, and we cleaned up what was thrown around there and took it to the dump.

X-Q. You took it to the dump. You didn't take any tanks out of the building, any oil tanks? A. No, sir.

X-Q. You saw oil tanks in the building when you went through, did you not? A. I don't remember, sir.

X-Q. You don't recall? A. No, sir.

[455] X-Q. Did you ever put any oil tank in the building? A. Did I ever?

X-Q. Did you? A. No, sir.

X-Q. I show you Government's Exhibit 5-G. I call your attention to the middle of the picture, and these two pipes sticking out of the ground back of the ranch house. I ask you, sir, what are they? A. You are asking me what?

X-Q. What are they? A. Two pipes.

X-Q. When is the first time you have seen those? A. After the Government left my premises I saw them.

X-Q. You never saw them before then? A. No, sir.

X-Q. Would you come down and point out on your chalk where those two pipes are? A. Yes, sir.

[Witness leaves witness stand and goes to the plan affixed to the blackboard.]

X-Q. This is the ranch house? A. Yes.

X-Q. This line here depicts the edge of the road? A. Yes.

X-Q. This is the cellar entrance of the ranch house? [456] A. Over in this corner right here [indicating].

X-Q. Will you point out where the two pipes protrude? A. Could I look at the picture again?

X-Q. Surely. A. That is—

X-Q. What Government exhibit is that? Look at the back of it. A. 5-G.

X-Q. Take it with you, if you need to. A. That would be around here, sir [indicating].

X-Q. Keeping in mind this is the edge of the road, it would be where? A. Around here somewhere. [Indicating.]

X-Q. This designates what? A. The stonewall.

X-Q. Do you see a stonewall there? A. Yes, sir.

X-Q. On which side of the stonewall are those two pipes, on the road side or the field side? A. On the field side.

X-Q. You say on the field side? A. Yes, if I get you right.

X-Q. Which side of the stonewall are these two pipes that protrude out? A. This is the stonewall. Here are the two pipes [indicating].

X-Q. In the field side? [457] A. That is the way it appears to me.

X-Q. After you inspected the premises, after the Federal officers left, you saw those pipes, did you not? A. Yes, sir.

X-Q. Did you see where they led to? A. No, sir.

X-Q. You did not? A. No, sir.

X-Q. Weren't you curious as to where they led to? A. Was I curious?

X-Q. Yes. A. I found out where they led to.

X-Q. Where did they lead to? A. To an old tank.

X-Q. An old tank where? A. In the ground.

X-Q. In the ground? A. Yes, sir.

X-Q. Yet you had never seen those pipes prior? A. I had never seen them prior.

X-Q. They led to an old tank in the ground. And that

was where in location to the building? A. In the back of the ranch house.

X-Q. In the back of the ranch house. Did you dig up the tank? A. Yes.

[458] X-Q. What kind of tank was it? A. It was a large cylindrical tank, storage tank.

X-Q. Did it contain anything? A. No, sir.

X-Q. It was empty? A. Yes, sir, some water, just an old tank.

X-Q. Did you put in that tank? A. No, sir.

X-Q. I show you Government's Exhibit 5-S, and I ask you if you recognize the two dark objects? A. I know what they are.

X-Q What are they? A. Two fuel oil tanks.

X-Q. Do you know the capacity of them? A. They could be anywhere from 225 to 275, sir.

X-Q. They could be 275? A. Yes, sir.

X-Q. Did you see those in your inspection of the premises? A. I don't recall them, sir.

X-Q. You don't recall ever seeing these before or after the Federal agents left? A. No, sir.

X-Q. Do you recall any similar tanks to those with holes in them? Do you recall any similar tanks to those with holes punctured in them on the premises? [459] A. No, sir.

X-Q. Would you say that outside pipe did not lead into those tanks, those two outside pipes? A. Lead to these tanks? I couldn't say anything about them, sir. I don't know. When I removed the tank they didn't lead to anything.

X-Q. Where is the tank now that you removed? A. Where is it?

X-Q. Yes. A. It has been junked.

X-Q. You junked it? A. Yes, sir.

X-Q. Prior to February 23d, 1954, did you ever see anybody delivering oil to the ranch house premises? A. No, sir.

X-Q. At any time? A. When we put in kerosene, we had deliveries made there.

X-Q. What sort of tank were deliveries made to at that time? A. 50-gallon tank.

X-Q. Where was that kept? A. Up at the front of the ranch house.

X-Q. You applied for a storage permit at that time? A. No, sir.

X-Q. To store the 50 gallons? A. No, sir.

[460] X-Q. Would you say that no oil truck ever came to your premises and delivered oil after October of 1953 to the ranch house premises? Strike it out. Did you say that no oil truck ever went to the ranch house premises after October of 1953? A. We never had any oil truck go to the ranch house. We didn't have any call for oil there.

X-Q. You are sure you didn't have any oil truck? A. I am sure.

X-Q. You would have seen it if it came? A. Well, I wasn't there too much, sir.

X-Q. Do you know whether or not an oil truck did come? A. There was no reason for it to come.

X-Q. Do you know whether it did? A. To the best of my knowledge, an oil truck did not come.

X-Q. To those premises? A. To those premises.

X-Q. At the time you say you rented those premises in January of 1954, what was in the cellar of the ranch house? A. My Builtrite sheathing was in there.

X-Q. What else was in there? A. I had some old lumber stored in there, riff raff you would collect around the farm, junk.

X-Q. Was it full of junk? A. Was it full of—?

X-Q. Of junk? [461] A. Not full, not chock full, but pretty well taken up.

X-Q. Did it have sugar bags in it? A. Did it have sugar bags?

X-Q. Yes. A. No, sir.

X-Q. You saw sugar on the premises? A. I did.

X-Q. You want to say those weren't there on the 18th when you rented this premises? A. Do I want to say they weren't there? They were not there.

X-Q. You saw the vats and tanks there on the premises? A. Did I see them?

X-Q. Yes. A. I saw them.

X-Q. Do you want to say they weren't there on the 18th? A. They were not there.

X-Q. Did you see the cooking pot, that 9-foot long cylinder type tank? Did you see that on the premises? A. No, sir, I didn't.

X-Q. Did you see the copper column going from the cellar clear to the roof? A. I saw a lot of piping and different paraphernalia. I saw it, but to definitely say one certain thing, I couldn't say at that time I saw exactly any item.

X-Q. You read over the return of the warrant? [462] A. Yes, sir.

X-Q. Didn't you check off things that were in the building? A. Check off? Yes. No. I just checked for my Builtrite sheathing. The rest of the stuff meant nothing whatsoever to me.

X-Q. After you say you rented the premises to—what was his name? A. Joe Fuci.

X-Q. Who else did you see in the ranch house premises? A. I never saw anyone, sir.

X-Q. You never saw anyone? A. No, sir.

X-Q. Did you ever see anybody come in? A. No, sir.

X-Q. Did you ever see anybody go out? A. No, sir.

X-Q. You made some inquiries, didn't you, your family, as to what was going on at the ranch house? A. I was told

one time that there was a truck that pulled into the yard. I didn't think anything of it.

X-Q. How did the truck pull into the yard? A. Right in through the main yard.

X-Q. Who told you that? A. My folks.

X-Q. Which one? [463] A. I think my mother.

X-Q. She told you that a truck pulled into the yard? A. Yes, that's right.

X-Q. Did she tell you what kind of a truck? A. No, sir.

X-Q. Did she tell you what it had on it? A. No.

X-Q. When did she tell you this? A. One night I went home. I went there, and she said to me, that a big truck pulled into the yard today. I said, "Yes. So what?" She said, "Well, it went down back." I said, "That's for the building we have rented." She said, "Oh." And that is all.

X-Q. That's all? A. That was all.

X-Q. You didn't care what was in there? A. It didn't bother me at all.

X-Q. How long was this person going to store machinery? A. I told him I would need the barn again in four or five months.

X-Q. In four or five months? A. Yes, and he was agreeable to that.

X-Q. The only one time anybody knew about anything going into that building was this one occasion when your mother said that a big truck pulled in? [464] A. That's right.

X-Q. Did she go down to see what was unloaded? A. No.

X-Q. You never saw anybody come in or go out thereafter? A. No, sir.

X-Q. Were you aware of the doors in the building? You had keys to the building? A. The building was never locked.

X-Q. Did you ever see it locked? A. Yes, sir.

X-Q. When did you first see it locked? A. The first

time I saw the building locked was just after we put the electric stove up in the top floor. I didn't see the top door locked. I saw a padlock on the downstairs basement door.

X-Q. How do you get from the top floor to the basement door? How would you get from the field level floor to the basement? A. There were two ways to get there. You could walk from one floor, down a level, and around the stonewall to the entrance to the building, or there were a set of stairs inside, kind of rickety, and you can just about navigate them.

X-Q. I show you Government's Exhibit 5-Z. Do you see any of the debris you are talking about prior to January 15th in that picture? A. No, sir.

[465] X-Q. I show you Government's Exhibit 5-U. Do you see any debris in that picture? A. No, sir.

X-Q. 5-V. Do you see any debris that you are talking about in that picture? A. No, sir.

X-Q. 5-W? A. No, sir.

X-Q. 5-X? A. Here's a little bit, a board, a lot of other junk, like this plywood.

X-Q. How did the plywood get there? A. We stored plywood in there.

X-Q. You did? A. Yes, sir.

X-Q. From the time you say you rented these premises, you never had any occasion to want it? A. No, sir.

X-Q. Nor any occasion to want the Builtrite sheathing? A. I wanted the Builtrite sheathing.

X-Q. You didn't make any attempt to get it? A. No, sir.

X-Q. Didn't you have some conversation with this Joe fellow as to what kind of machinery he was going to put in there? A. No, sir.

X-Q. Didn't you tell him about the condition of the building, as [466] to how strong the floor was, how much weight it would take? A. I didn't interpret he was going to store

upstairs. I had it in my mind he must want the basement. So I didn't put any restrictions or anything on it.

X-Q. You had this barn at the time, did you not, sir? You had this cow barn and garage in front of it? A. Is it okay if I come over there?

X-Q. Sure.

[Witness leaves the witness stand and goes to the plan affixed to the blackboard.]

A. This barn? [Indicating.]

X-Q. Yes. A. This was our cow barn.

X-Q. Which level was the cow barn? A. The cellar level.

X-Q. The next level? A. This would be the same level. This is the refrigeration room.

X-Q. The next level was on the second floor? A. This would be part of the second floor. This would be the hayloft [indicating].

X-Q. Is there a third floor? A. Yes, sir.

X-Q. What was on the third floor? A. Just old chicken incubators.

X-Q. This ell from the barn, from Mossman Road, was kept there? [467] A. We used this part for hay storage and for machinery, farm equipment and supplies.

X-Q. Farm equipment and supplies? A. Yes, sir.

X-Q. Do you want to resume the stand? A. Yes, sir.

[The witness returns to the witness stand.]

X-Q. When this man came to the farm, you told him to take a look around the buildings? A. Yes, sir.

X-Q. Did you tell him to look around the cow barn? A. No.

X-Q. What buildings did you have in mind? A. I told him we had the garage available, and that we had the barn in back of the cow barn.

X-Q. You did not call it a barn, did you? A. What?

X-Q. You didn't call it a barn, did you? A. It's a ranch house.

X-Q. Didn't you tell him, "a ranch house"? A. I don't recall. It's a ranch house-barn affair.

X-Q. Didn't you say it was a ranch house to him? A. To him?

X-Q. Yes. A. No, sir.

[468] X-Q. What did you call it when you talked to him? A. When I was talking with him I told him there was another barn available in the back of the cow barn.

X-Q. Had you ever seen this man before? A. No, sir.

X-Q. Didn't you think it strange that he would pick your farm out in that area for the storage of machinery? A. No, sir.

X-Q. You weren't curious at all? A. No, sir.

X-Q. You didn't ask him what type of machinery it was, where he had got it? A. No, sir.

X-Q. How much money did you receive from this man? A. $25.

X-Q. That is all? A. That's it.

X-Q. Was this a payment in advance? A. It was payment in advance.

X-Q. Did you get paid for the next month? A. I did not.

X-Q. Weren't you looking for him around the 18th? A. Not especially, sir.

X-Q. Do you recall talking to Mr. Cataldo, the fellow who arrested you? A. Yes, sir.

[469] X-Q. Didn't you tell him it took two men to operate this still? A. I never said any such thing to Mr. Cataldo.

X-Q. You never said anything to him along those lines? A. No, sir.

X-Q. You are sure of that? A. Positive, sir.

X-Q. You say now that he is lying about it? A. I certainly do.

X-Q. Did you ever smell any odors coming from that building? A. No, sir.

X-Q. You never did? A. No, sir.

X-Q. What direction is your house, or where does your house lie direction-wise in relation to the still building? A. Shall I point out both buildings?

The Court: Can't you describe the direction it is?

The Witness: My house is at the end of the circular drive.

X-Q. Your house is east, west, north or south of the still building? A. Northeast.

X-Q. Northeast. When you had a west wind you never smelled the thing, is that right? A. I never smelled anything from that building.

X-Q. You never saw any smoke coming from the house? [470] A. No, sir.

X-Q. You never saw anybody there at all? A. No, sir.

X-Q. Sir, during the noon recess did you have a chance to check your school records? A. No, sir.

X-Q. Did you make any attempt to check them? A. Did I make any attempt to check them?

X-Q. Yes. A. I talked over with my school companions about the time that we were attending school, and they helped me to refresh my memory.

X-Q. Do you want to say now that you went to school in February of 1950? A. No, sir.

X-Q. When did you stop going to school? A. At the end of January.

X-Q. And prior to the end of January, 1954, when did you stop classes? You had some exams? A. I finished my exams.

X-Q. Did you have a period of exams after you had finished your regular classes? A. I don't follow you, sir.

X-Q. Well, you were going to school in regular attendance? A. Yes.

[471] X-Q. At some time classes were over? A. Yes.

X-Q. You had examinations? A. Yes.

X-Q. When were classes over in 1954, in January of 1954? A. In January, at the end of January, they were over.

X-Q. You told us on Thursday that in 1953, when you had the short circuit between your mother's house and the barn, that you thought at that time you would put electricity into the ranch house, did you not? A. Yes.

X-Q. You always wanted electricity in there? A. Yes. We had electricity in there, but each time you put another bulb on, all of them got lighter and lighter, dimmer and dimmer, rather, and there just wasn't enough current going over there, and then we went down back with the big truck one day and knocked down the wires.

X-Q. When was that? When did you knock down the wires? A. About October.

X-Q. Did you call the electric light company? A. No, sir. It wasn't their wires.

X-Q. It wasn't their wires? A. No. It came from the top of the barn to this ranch house.

X-Q. Who installed the outside wires in the first place? A. They were there on the farm in existence when I got there.

[472] X-Q. What electrician did your work? A. No electrician.

X-Q. When did you make application or when was application made for the electric light company to run wires in from the street? A. We would have to check when my brother made the application.

X-Q. Was it before or after you ran the underground wire? A. What?

X-Q. Was it before or after you ran the underground wire? A. He made application before I ran the wire.

X-Q. You are sure of that? A. Quite sure, sir.

Mr. Lewald: I have no further questions.

Redirect Examination by Mr. Toltz

Q. Mr. Quirk, there is one thing I would like to clear up. Did your brother go back to live in this house before the raid? A. Yes, sir.

Q. Can you fix the time he did go back to live there? A. Yes, sir.

Q. How do you fix the time? A. Because he had a baby, in August.

Q. Is that when he went back to live there? A. Yes, sir.

Q. How long did he remain there? A. Until some time in October.

Q. Of what year? A. 1953.

[473] Q. Did anyone ever show you pictures and ask you to identify anyone? A. No, sir.

Q. At any time did you object to looking at any pictures? A. No, sir.

Mr. Toltz: That is all.

Mr. Smith: Mr. Goldstein, would you stand up?

[The Defendant Goldstein stands up.]

Recross Examination by Mr. Smith

X-Q. Have you ever seen this man, Mr. Quirk, prior to February 23 or February 24, 1954? A. No, sir.

X-Q. Do you know him? Did you know him prior to February 24, 1954? A. I did not know him, sir.

X-Q. Had you ever talked to him prior to February 24, 1954? A. No, sir.

The Court: That is all. Step down.

Mr. Toltz: Mr. Edward Downey.

Direct Examination by Mr. Toltz

Q. What is your name, sir? A. Edward Downey.

Q. How old are you? A. 35.

Q. You live where? [474] A. Center Street, Roslindale.

Q. What is your occupation? A. I am an attorney-at-law, sir.

Q. Some time in 1953 did Robert Quirk go to school with you? A. Yes, sir, since 1950.

Q. Since 1950? A. Yes, sir.

Q. Did you see him at school? A. Yes, sir.

Q. Attend classes with you? A. That's right, sir.

Q. Some time early in 1954 were you at his home? A. Yes, sir, I was.

Q. Can you place the time, Mr. Downey? A. Some time right around Valentine's Day.

Q. That would be in what month? A. February, probably around the 14th or the 15th.

Q. Who else was present? A. Well, myself and my wife, Bob and his wife, Jack Tierney and his wife, another fellow from school named Alfred and a girl named Lorraine Foley, and I think there was another couple, but I can't place who it was.

Q. You were at— A. I know who it was now, a Bill Conway.

Q. You were present at Robert Quirk's home? A. That's right.

[475] Q. Did you have occasion that night to leave his home and go out to the cow barn? A. Yes, sir. He took us on a tour of the cow barn.

Q. Do you remember seeing what is called the ranch house? A. Well, he showed us the whole place from the outside. We didn't go into the ranch house. We went into the cow barn. We went all through the cow barn.

Q. He showed you the whole place? A. The whole area, yes.

Q. Was there any unusual smell that you detected that evening? A. No, sir, nothing unusual.

Q. Did you detect any in the cow barn, either? A. That

was kind of putrid, but other than that there was nothing unusual.

Q. Did you detect anything unusual about there at all? A. No, sir.

Q. Do you remember whether Gerald Quirk was there that night? A. He was, sir.

Q. Do you remember what he did at that time? A. He was warming up the Diesel, taking off for Canada.

Q. On that particular evening? A. Yes, sir.

Q. Was it warm or cold that night? A. Very cold, sir.

Mr. Toltz: You may inquire.

[476] *Cross Examination by Mr. Leonald*

X-Q. You say you are an attorney? A. That's right, sir.

X-Q. How long have you been an attorney? A. 1955.

X-Q. Are you now practicing? A. That's right, sir.

X-Q. Your office is where? A. 18 Tremont Street.

X-Q. Are you associated with anybody? A. Yes, sir, four other fellows are in the office with me sharing expenses.

X-Q. Who are the four other fellows? A. Frank Popilo, Al Hutton, Sheldon Pitchell, Chet Baker.

X-Q. When did you graduate from law school? A. I graduated from law school in June of 1955, sir.

X-Q. June of 1955? A. That's right, sir.

X-Q. How long did you go to school? A. Five years, from September of 1950.

X-Q. From September, 1950? A. That's right, sir.

X-Q. Right through to 1955? A. Yes

X-Q. When did you enter law school? [477] A. I went two years to the University. I entered the law school in the summer of 1952.

X-Q. In the summer of 1952? A. The summer of 1951, I am sorry.

X-Q. You entered the law school? A. That's right.

X-Q. You were going to law school in 1952, 1953, 1954, and 1955, four years to law school? A. I went three years to law school and one summer, after I finished two years in the University. I went into the law school that summer, in that same summer.

X-Q. When did you start law school, what date? A. It would be the summer of 1952.

X-Q. Robert Quirk was not going to law school with you, was he? A. We were in—

X-Q. Was he going to law school with you? A. No.

X-Q. You never saw him in school? A. Yes, sir.

X-Q. In law school? A. Not in law school, but in the same building the University is situated in.

X-Q. Did he attend classes with you? A. He did in the University.

X-Q. This was in 1950 and 1951? A. Yes.

[478] X-Q. He didn't attend any classes with you in 1953 and 1954? A. No, sir.

X-Q. What was the occasion of going to his farm? A. Well, a group of us at school used to get together, mostly all married couples, and we would have a party at one another's house.

X-Q. And this was a party this night? A. We were up to his house.

X-Q. You had some drinks, did you not? A. We may have had a couple.

X-Q. Then you went out to look at the cow barn? A. We looked over the place, yes, sir.

Mr. Toltz: We are not all teetotalers, I imagine.

JOHN J. TIERNEY, *Sworn*

Direct Examination by Mr. Toltz

Q. What is your name? A. John J. Tierney, Jr.

Q. You live where? A. 10 Glendale Street, Dorchester.

Q. What is your occupation? A. I am an attorney-at-law, sir.

Q. D you know Robert Quirk? A. I do, sir.

Q. Did you attend Suffolk University with him? A. Yes, sir.

[479] Q. Did you see him at school? A. Did I?

Q. Did you see him at school during 1953? A. 1953, yes, sir, I believe I did.

Q. Do you remember being at his home in February of 1954? A. I believe so, sir.

Q. Can you recall the date of the occasion? A. I can recall the occasion. It was a party being held at his home, about a week prior to the raid made on the barn.

Q. How do you recollect it was about a week before the raid? A. Mr. Downey and I were in the school corridor. He asked me if I had seen the paper, it was all written up in the paper. I said, "Gee, we had just been out there a week before. Isn't it funny we didn't notice it?"

Q. You didn't notice anything unusual that night? A. No.

Q. Do you remember going out to the cow barn? A. Yes, sir.

Q. Do you remember being shown around the farm? A. Yes, sir.

Q. And the buildings around the farms? A. Yes, sir.

Q. Did you detect any unusual odor at that time? A. Nothing unusual, only what is connected with the barn containing the cows.

[480] Q. With the barn and cows? A. Yes, sir.

Q. Did you see his brother Gerald that night? A. I can't remember seeing his brother Gerald that night, sir.

Q. You have seen Robert Quirk on occasions since then? A. Since then, lots of times before then.

Q. And before then? A. Yes, sir.

Mr. Toltz: That's all.

Mr. Levald: I have no questions.

The Court: No questions. Step down.

I would like to see counsel up here.

[Conference at the bench between Court and counsel, not taken.]

The Court: I think it is time to quit. There are some short witnesses. This Court cannot sit tomorrow. We have the annual Judicial Conference. So I am going to excuse you now until Wednesday morning at 10 o'clock. You will have the case before noontime.

[Whereupon at 3:00 p.m. the trial was recessed to Wednesday, June 19, 1957, at 10:00 a.m.]

[481] FIFTH DAY

Court Room No. 1
June 19, 1957
Federal Building, Boston

JOHN INGHAM, *Sworn*

Direct Examination by Mr. Toltz

Q. What is your name? A. John Ingham.

Q. You live where? A. West Acton, Massachusetts.

Q. What business are you in? A. A well driller.

Q. At some time had you bought a piece of machinery from Bob Quirk? A. I did.

Q. Would you step down here for one minute? Look at the machinery here. Tell us whether you bought something similar to what you see here? A. Yes, I bought the smaller one, the 2-inch gate valve.

Q. A gate valve? A. A 2-inch gate valve, from Mr. Quirk.

Q. Was it similar to that one there? A. Similar to this model.

Q. When did you buy it from him? [482] A. In April 1953.

Q. 1953? A. 1953.

Q. Have you a receipt? A. It is March.

Q. Of what year? A. 1955.

Q. Will you take the stand, please? This is not the one you bought, is it, sir? A. No, sir, I still have the one I bought.

Mr. Toltz: You may inquire.

Mr. Lewald: No questions.

The Court: Step down.

CLYDE L. BARBER, *Sworn*

Direct Examination by Mr. Toltz

Q. What is your name? A. Clyde L. Barber.

Q. You live where? A. Sudbury, Massachusetts, West Pond Road.

Q. What business are you in? A. Rubbish and garbage disposal.

Q. Do you know Robert Quirk? A. I do.

Q. Have you had occasion to be on his farm during the months [483] of September, October, November, and December of 1953? A. I did.

Q. January and February of 1953, of 1954? A. I did.

Q. For how many years had you been going there? A. Approximately eight years.

Q. Do you know the farm pretty well? A. I do.

Q. Sometime in January of 1954 were you on the farm with a stove of some kind? A. I was.

Q. Can you tell the Court the date? A. The 14th of January.

Q. 1954? A. That is right.

Q. And what did you do with that stove? A. I put it in the building that the government seized.

Q. The building that the government seized? A. That is right.

Q. Now on that date did you notice the cellar of this piece of property that the government seized? A. I did.

Q. Was there anything in that? A. Old planks, boards, and rubbish.

Q. Was there any machinery of any kind in there? [484] A. No.

Q. Was there any still in there? A. There could not have been.

The Court: Was there?

Mr. Toltz: Was there?

The Witness: No.

The Court: Never mind "could there."

Q. You delivered garbage to the piggery? A. I did.

Q. Was there a cooker there? A. There was.

Mr. Toltz: You may inquire.

Cross-examination by Mr. Leveld

X-Q. Sir, did you go in the cellar of these premises? A. I did not.

X-Q. And what observation—where did you see the cellar from? A. The door was off and I could look in the door.

X-Q. Is that a trap door? A. It is a swing door.

X-Q. It was off at that time? A. It was off.

X-Q. Did you deliver garbage to the Quirk premises? A. I did.

X-Q. In December of 1953. Where did you deliver it? [485] A. I unloaded garbage to three different points on the trailer in the yard and down to what would be the old calf pasture, in back of the building you seized and over in the field where the original piggery is.

X-Q. To get to the calf barn near this building that was seized, how would you get there from the road? A. I would have to go by, the road goes right down by the—

X-Q. Was there some time you made deliveries to another place on the farm? A. Over at the left, where the original piggery is at the present time.

X-Q. How would you get there? A. I would have to turn left of the old corn barn and go over through the field.

X-Q. That would not take you right through the middle of the farm, would it? A. No, it would not take me to the middle of the farm but it would take me to where I could see all over the farm.

X-Q. Would that road go by this building that was seized? A. No, not that one.

X-Q. Did you have any conversation with anybody on the farm about how to get into this place where you were delivering the garbage at a later date? A. They told me to take it over there.

X-Q. To take it around? [486] A. Yes.

X-Q. Rather than through the farm, by the cow pasture? A. I could not get there any other way, only that.

X-Q. Now are you familiar with the road that runs by this building that was seized? A. I am.

X-Q. And do you know if that road has a name? A. I do not.

X-Q. Is there a road that that road leads into that has a name? A. That goes down into the field.

X Q. It goes down in the field? A. That is right.

X-Q. Do you know whether or not you can get vehicles over that to the next road? A. I don't.

The Court: You are not cross-examining on the main issue?

Mr. Lewald: I can put him on as my witness, if you would rather, your Honor, I will suspend.

The Court: Go ahead.

X-Q. Do you recall at some time the pigs being moved?

The Court: I am going to reverse my ruling, you can cross-examine only on what he testified.

Mr. Lewald: Then I will suspend now. I have no further questions.

[487] The Court: I have not said I would let you put him on as your witness.

Mr. Lewald: I am sorry.

The Court: I am sorry.

Mr. Lewald: I intend to call him anyway, your Honor.

The Court: Step down.

Mr. Smith: One question. On January 14th did you see any vats there or tanks, did you see any rectangular vats in the garage or cellar?

The Witness: I did not.

Mr. Toltz: The defendant Quirk rests.

The Court: All right.

Mr. Lewald: Mr. Barber.

[Conference at the bench as follows:

Mr. Lewald: He will tell, if allowed, that there was no 2-inch plastic lines going up to this area for the pigs, that the water was carried by buckets from the pool. Also they were not cooking garbage at that time, they had it set up but no garbage was ever cooked.

The Court: All right. Put him on.

Mr. Smith. We are required to file new motions for judgment, of acquittal.

[488] The Court: I will take these under advisement. the same ruling.]

CLYDE L. BARBER, *Recalled*

Direct Examination by Mr. Lewald

Q. Stay there. Where in relation to the farm buildings, the farmhouse, the barn and these premises, the building that was seized, was the place where Mr. Quirk kept his

pigs in the latter part of January? A. That would be approximately 4 rods to the south of his building.

Q. Now did you make trips to that area, did you go to that area at that time? A. I did.

Q. Would you tell us whether or not there were any 2-inch plastic lines up to that area? A. I never have known any.

Q. Did you ever see Mr. Quirk watering the vats for the pigs? A. I never was there when they were watering any pigs.

Q. Do you know how the water got up to the pigs? A. The only time I saw any water to the pigs is sometimes they come up with the trailer with some water in the barrels.

Q. When was the first time you saw any apparatus on that farm that was going to be used or could be used as a garbage cooker? A. That was the latter part of 1953 or the very first of 1954.

[489] Q. And could you describe what that was? A. It was an iron tank set up on firebrick with rubber tile under it, to cook it.

Q. Did you ever see a fire there? A. I did.

Q. When did you see that? A. Many times I had to bring tires there, I would bring tires.

Q. Fires. A. That is what they used, the rubber tires to make fire.

Q. When was the first time to your memory a fire was lit under that? A. It was always going.

Q. It was always going? A. Yes.

Q. From what time to when? A. Well, I have been there at half past six in the morning.

Q. What date, sir? A. I could not pinpoit that date.

Q. Was it 1952? A. No.

Q. 1953? A. It must have been the latter part of 1953.

Q. A fire was going under this? A. Yes.

Q. You are sure of that? [490] A. I am sure of that.

Mr. Lewald: I have no further questions.

Mr. Toltz: No questions.

The Court: Step down, please.

EMILE HENRY TAILLACQ, *Sworn*

Direct Examination by Mr. Lewald

Q. Mr. Taillacq, your name, please? A. Emile Henry Taillacq.

Q. Your address? A. 73 Virginia Road, Lincoln, Massachusetts.

Q. In 1953, 1954, by whom were you employed? A. United States Department of Agriculture, Animal Disease Control.

Q. In the latter part of 1953 and 1954, did you ever have occasion to visit the Quirk farm? A. Yes, sir, I did.

Q. The purpose of your visit was what? A. Animal inspection.

Q. What would you inspect? A. Pigs and garbage cooking apparatus.

Q. Can you tell us whether or not there was any apparatus there for cooking garbage? A. Well, we had—

Mr. Toltz: Yes or No, sir.

[491] The Witness: Sir?

Q. Was there any? A. No, sir, according to my reports to the United States D.A.—

Mr. Toltz: I object.

The Witness: Excuse me.

Q. From your memory was there ever any garbage cooked? A. As far as I recall, no, sir.

Q. And after you made a trip, how often did you go to the farm during that period? A. Twice a month.

Q. Twice a month? A. Twice a month.

Q. What was the general purpose of your visit, what did you check when you went to the farm? A. I checked the pigs to see if they had disease.

Q. You checked the pigs for disease? A. That is right and also to see about the farmer cooking the garbage, sterilizing it because we believe—

Mr. Toltz: No.

Q. You were going to check whether or not he was cooking garbage, specifically? A. Right.

Q. While you were on the farm, did you ever have any conversation with any of these people sitting down here in the front row? [492] A. Well, sir, this gentleman over here said—

Q. This fellow here [indicating]? A. Yes, sir.

Mr. Lewald: May the record show he is pointing at Robert Quirk.

The Court: I do not know who he pointed at.

The Witness: The gentleman on the left with the blue suit.

Mr. Lewald: Mr. Quirk, would you stand up? Is this the gentleman?

The Witness: Yes, sir.

Q. What was that conversation about? A. About cooking garbage and, you know we had a program about the different—

The Court: Listen, let's not get into the story.

Q. Give us the conversation. A. We discussed different methods—

Mr. Toltz: No. I would like to hear the conversation.

The Court: What is the purpose?

Mr. Lewald: The same purpose as before.

The Court: He said he never saw any garbage cooked there. Isn't that enough?

Q. Did you have some conversation with Mr. Quirk about cooking garbage, as to whether or not garbage was cooked there? [493] A. Yes, sir.

Q. What was that conversation? A. Well, they were going to cook—

The Court: What did he say?

The Witness: I don't recall, sir, it is so long ago.

Q. In substance he was going to cook at some future date? A. A future date, yes, sir.

Q. When is the last time— A. May I look through the record?

Q. —you visited the farm? A. I cannot remember.

Q. Can you give us the approximate year? A. I guess it was March 1955.

Q. Is that your best memory, March 1955? A. Yes, sir.

Q. Did you see any 2-inch plastic pipe or other 2-inch pipe up around the area where the pigs were kept? A. I don't remember seeing any, no, sir.

The Court: You would not say it wasn't there, would you?

The Witness: That is something— I did not see it.

The Court: All right.

The Witness: I did not see it.

Q. Now what is your best memory, sir, as to the listance from [494] these farm buildings that these pigs were kept in when you were up there in January of 1954? A. Oh, about a quarter of a mile from the main house, from the main buildings, you know.

Mr. Lewald: I have no further questions.

Mr. Toltz: No questions.

DONALD W. GOODRICH, *Sworn*

Direct Examination by Mr. Lewald

Q. Your name, please? A. Donald Goodrich.

Q. And your address? A. 1 Boulder Brook Road, Wellesley.

Q. Your occupation is what, sir? A. I am dean and registrar of the college at Suffolk University.

Q. Did you bring with you today certain records which are kept under your custody and control? A. I did.

Q. Did you bring with you the records of Robert Quirk's attendance at your school for the fall semester of 1953? A. No, sir.

Q. Did you bring with you records pertaining to Robert Quirk for the fall semester of 1953? A. I did, it is the record—

Q. Could you tell us what courses he was taking during that [495] fall semester and what time and days those courses were held? A. May I refer to the record? [Witness refers to record.] He was taking two courses during the fall semester of 1953-1954. He was taking three courses, two in philosophy, one called Seminars in Philosophy and one called Problems in Philosophy; and one course in economics called Labor Economics. Two of the courses met mornings on Tuesday and Thursday, one at 10:25 and one at 11:50. One course met on Thursday evening at 6:00 o'clock.

Q. Now, sir, can you tell us the day that regular classes for these courses stopped at the end of the semester? A. January 14, 1954.

Q. Do you have any record of Mr. Quirk attending school after that day for the examination for that semester? A. No, I do not.

Q. Do you have any record of him taking the final examinations for those courses? A. No, I do not.

Q. Did Mr. Quirk leave school at some time in the 1953-1954 semester? Strike it out. A. He did.

Q. Did Mr. Quirk leave school at the end of the 1953 semester? A. He did. He did not, he left at the end of that semester.

Q. That was January 15, as pertaining to Mr. Quirk? A. The last day he could have, according to the record, attended [496] classes—

Mr. Toltz: I object.

The Witness: January 14.

The Court: What does the record show?

Q. When did he next attend school?

Mr. Toltz: Wait, I don't think—

The Court: Go ahead.

Mr. Toltz: I withdraw it.

Q. When did he next attend your school? A. In September 1954.

Q. September 1954? A. Yes, sir.

Mr. Lewald: I have no further questions.

Cross-examination by Mr. Toltz

X-Q. He was at the school under G.I.? A. That is right.

X-Q. In order for him to have left school there had been a reason, is that correct, in order to come back to school the following fall? A. We readmitted him in the fall.

X-Q. Have you there the letter from the dentist that he could not attend school because he had lost all his teeth in an accident? A. I have no such letter.

[497] X-Q. Who would have any letters that would come with his leaving school? A. The file. If there were such a letter, I don't recall such, but if there were, it would have been kept in his file until he withdrew from the school finally and then the file would be pruned and such a letter might be destroyed.

X-Q. Have you his file here? A. I do.

X-Q. Complete file? A. All that exists now.

X-Q. And it shows he did go back to school and stay there until 1955? A. That is right.

X-Q. Is that correct, sir? A. That is right.

X-Q. And that he had been in school in 1953? A. He had been in school during the fall semester 1953-1954.

X-Q. Have you any attendance records there as to the

days he was at school, the days he was not at school? A. No, sir, I do not.

X-Q. You would not know when he was at school or when he was not in school? A. Not of my personal knowledge, no, sir.

Mr. Toltz: Thank you.

Mr. Lewald: I have no further questions, thank you, Mr. Goodrich.

[498] HAROLD PETERS, *Sworn*

Direct Examination by Mr. Lewald

Q. Your name, please? A. Harold Peters.

Q. Would you get a little closer to the microphone so we can hear you? Your address, sir? A. Tyngsborough Road, Tyngsborough, Massachusetts.

Q. At sometime were you employed at the North Acton Quarry? A. I was.

Q. When did you start your employment there? A. June of 1955.

Q. What was your duty there? A. I was foreman.

Q. What equipment was in the quarry at the time you arrived there? A. We had a derrick and a dump truck.

Q. A derrick and a dump truck. Now in December of 1953 what equipment did you have there? A. We still had the derrick and the truck and a small crane.

Q. Who was in charge of this equipment? A. A man by the name of Jacob who lived in Tyngsborough.

Q. Now sometime in January of 1954 did something happen to the plant? A. Yes, the derrick broke down so we had to shut the plant down for two months.

[499] Q. Do you know who repaired the derrick? A. It was a company from Hudson, Massachusetts.

Q. Do you recognize any of the individuals sitting here in the first row? A. No, I don't.

Q. Would you know whether or not Mr. Robert Quirk was ever employed there to do maintenance work, Mr. Quirk, during December, January and February of 1953 and 1954? A. Not while I was there.

Q. Were you foreman at that time? A. I was.

Mr. Lewald: I have no further questions.

Cross-examination by Mr. Toltz

X-Q. How long did you work there, sir? A. Over a year.

X-Q. You started when? A. May of 1953.

X-Q. You ended when? A. September of 1954, September, October, somewhere in there.

X-Q. Who was your employer? A. John Vagio.

X-Q. And was some of the granite trucked from there? A. There was one truck that made two trips to New York with granite.

[500] X-Q. It used to make two trips? A. That is all he made while I was there, was two trips.

Redirect Examination by Mr. Lewald

Q. Were any of those trips made in 1954? A. What is that, sir?

Q. Were any of those trips made in 1954? A. All the trips were made in 1954 while I was there, were all local deliveries.

Mr. Lewald: I have no further questions. You are excused, sir.

[Conference at the bench as follows:

Mr. Lewald: When this witness testified on direct examination, it was my recollection he identified all of the samples. I find out the Clerk has five of the samples not identified by this witness. They are in for identification only. I would like to put him on to get those five samples in, for exhibits.

The Court: Can't you do it fast, we are delaying this thing.

Mr. Toltz: I will agree they can be marked.

The Court: You will agree?

Mr. Toltz: Yes.]

[501] [Five samples marked for Identification received in evidence.]

[Further bench conference as follows:

Mr. Lewald: This will be my last witness.

The Court: He does not have to go on, counsel will stipulate. I thought you said that man was your last witness.

Mr. Lewald: This will be my last witness. He is a supervisor of the Alcohol Tax Unit. He had the conversation with Mr. Quirk, and also he made certain observations prior to the time, in regard to odor, which Mr. Quirk says there wasn't any odor and which he put on witnesses saying there wasn't any odor.

The Court: He said they did not smell any, he did not say there wasn't any.

Mr. Lewald: He was going to say there was —

The Court: I won't let you, that is out, that is all.

Mr. Lewald: On the question, I think I am entitled to it.

The Court: You are not entitled to it, I have made a ruling on it.]

[502] [Further conference at the bench as follows:

The Court: I understand all parties have rested.

Mr. Lewald: That was the government's last witness. Mr. Fletcher will not testify.

The Court: We will take a 10-minute recess.]

[Short recess.]

[Further conference at the bench as follows:

The Court: My secretary called my attention to

some fact — did Quirk testify that Fletcher said he would lose his farm?

Mr. Lewald: Yes.

The Court: I will let you put Fletcher on for the purpose —

Mr. Lewald: He will deny it, Fletcher is going to be very brief anyway.

The Court: I said I would let him go on to deny any conversations he had, if he can deny it, with Quirk, in which he told Quirk or is alleged to have told Quirk that he would lose his farm and everything else. I had forgotten that.

Mr. Smith: My request for instructions, while I am up here.

[503] Mr. Lewald: I will let it go.

The Court: Put him back if you want.

Mr. Lewald: I wanted the other aspect more than this. I will accept the denial of it.

Mr. Toltz: I don't want to —

The Court: I am not greatly interested.

Mr. Toltz: Never mind.

The Court: All right.

Mr. Toltz: On the motion we have submitted originally, there is a brief of mine. I had some, too.

The Court: That is right, I will take these under advisement.]

The Court: I think before counsel argues, I will ask the jury to return a verdict of not guilty against the defendant Gerald Quirk.

[The jury then returned a verdict of not guilty against defendant Gerald Quirk.]

The Court: I am going to ask counsel to argue the case now.

[Argument of counsel.]

[504] CHARGE TO THE JURY

The Court: It will take me 10 or 15 minutes to charge you on the law. The Supreme Court of the United States on Monday of this week decided a case which brings us back to a good understanding of the law. Until this decision was rendered, it was almost a disgrace if you claimed the Fifth Amendment, the benefits of the Fifth Amendment, it was said you did not have to testify against yourself.

But now it has been decided that the amendment is good law and part of our Constitution. While I haven't read the Supreme Court's decision, it seems in effect in some points to warn people that their rights still exist and they should be recognized.

Now the reason I mention that here is that there is no Fifth Amendment here but we have rules of evidence.

The purpose that I had in mentioning that Supreme Court decision was to call to mind that we have rules and we are going to live by the rules. I hope none of us want to give up any rights, that the Constitution or any court decisions guarantee.

Now I mentioned that here because this is your first criminal case, if you recall, and the rules here are slightly different than in a civil case. In the civil case you decided by the greater weight of the evidence. That evidence is a little more worthy of belief than the opposing evidence. But [505] in a criminal case before you can convict a defendant you must be satisfied beyond a reasonable doubt of his guilt. Now "beyond a reasonable doubt" doesn't mean any more than what it sounds like. In a moment I am going to read what some court has said about it, with approval, but before that I want to say to you that you are the body that decides all of the facts in this case. I hope that nothing that I will say will indicate to you how I personally feel

about it, because you are in just as good a position to decide the facts as I am.

And, as I leave that decision entirely to you I want you to leave the law to me, no matter how unfairly you think I interpret it or how unfair the law is. If I am wrong, there is a court not very far away that will correct me. You want to decide this case not only on the facts as you find them but free from any bias and prejudice, free from any conjecture or suspicion. You are entitled to decide what are logical inferences from certain established facts but to be logical inferences they must be something that appeals to you as reasonable people.

Now I am going to read to you what was said in United States against Youtsey, 91 Federal 864 at 868:

> "In the first place, the law presumes that persons charged with crime are innocent until they are proven by competent evidence to be guilty. To the benefit of this [506] presumption of evidence the defendant is entitled; and this presumption stands as his sufficient protection, unless it has been removed by evidence proving his guilt beyond a reasonable doubt. The burden is on the government, before the defendant can be convicted, of establishing every essential element of the crime charged, beyond a reasonable doubt. A reasonable doubt of guilt is a doubt growing reasonably out of the evidence, or the lack of it. It isn't a captious doubt; not a doubt engendered merely by sympathy for the unfortunate position of the defendant, or a dislike to accept the responsibility of convicting a fellow man. If, having weighed the evidence on both sides, you reach the conclusion that the defendant is guilty to that degree of certainty that would lead you to act on the face of it in the most important and critical affairs of your life, you may properly convict him. Proof beyond reasonable doubt is not proof

to a mathematical demonstration. It isn't the proof beyond the possibility of mistake. If such were the standard of evidence required, most criminals would go unwhipped of justice."

[507] Now the government, as I have pointed out, must satisfy you beyond a reasonable doubt of the things that it alleges and the things that it alleges are in these two indictments which you will take to the jury room with you. One is an indictment charging a conspiracy between the named defendants to violate the laws of the United States and the other two indictments charge the defendant Robert Quirk with operating a still, setting a still up and operating it. You can read it and bring it with you.

These are separate offenses. The conspiracy indictment, I would recommend that you consider first. What is a conspiracy? A conspiracy is an agreement between two or more parties to do an illegal thing. It is an agreement to do an illegal thing. I will limit the definition to that.

Now the government, in essence, says that these two defendants, Samuel Goldstein and Robert Quirk, entered into an agreement to set up and operate a still. Well, let's see what have you got for evidence? You decide what the evidence is, but I will run the risk of your criticizing me by pointing out that the defendant Quirk owns, in part, the property on which the still was located.

There has been some evidence from the earlier witnesses that someone who resembled Goldstein, or who the witness said, "I think that is the man," something to that effect, purchased some tanks, a cylindrical object and several [508] rectangular vats, and the witness testified that the man who manufactured them said that he put some mark on it, his name or something else, and that four or five months later he saw those same vats and his name. No, he did not say four or five months later, he said he saw them some time later, I do not know when. You decide that. But

some identifying mark was on them showing that they were the vats that he made. I guess undoubtedly they were the vats, I guess undoubtedly you will find they were vats that were used to contain mash.

Now let us analyze that. If you decide that Goldstein purchased this equipment in September and it was found on February 23rd on Mr. Quirk's property, what is the logical inference from that, is it susceptible of several explanations? Could it be that Goldstein sold this equipment to somebody who in turn sold it to somebody else, who in turn sold it to somebody else and eventually it landed in Quirk's farm? If you found that Goldstein was not connected with an agreement to run a still, you could not convict him.

On the other hand, if you find this was part of an overall scheme to set the still upon Quirk's property and they moved to do that, then the slightest movement in that direction is sufficient to establish a conspiracy.

In the State courts, as distinguished from our court, a conspiracy is established when you find a mere agreement between two people to do an illegal act. That is [509] not true in the Federal courts. There must be what is known as an overt act in addition to the agreement, but the overt act can be the simplest step possible in the perpetration of the agreement arrived at.

If, for instance, you and I agree to rob a bank and I say, all right, I will go over and steal a key, I start off in that direction, that is an overt act. I don't have to be caught in the bank. I am guilty then, you are guilty of the crime of conspiracy because we have agreed to do something illegal and we have taken a step to accomplish that.

Now the defendant Quirk owns this property. He has told you that he leased this building to some strangers whom he identified by name. That is his story.

The government wants you to believe it is a sham story.

that he in fact was a party to this enterprise of operating a still without a proper bond.

Now when it comes to the question of credibility of a witness, you have seen the defendant, you have heard his story, you have seen the agents and heard their stories. You are conscious of the fact that the government has the burden of proving their case beyond a reasonable doubt. If they have proved it as to the conspiracy count, you can find a verdict of guilty against each.

Now since there are only two defendants left, you cannot find one of them guilty of conspiracy and the other [510] not guilty, because to conspire you have to have someone to conspire with, they are both guilty of the conspiracy or not.

On those facts, the facts of the alleged purchase by Goldstein of certain material and their later having been found in Quirk's premises, can you draw a logical inference that these men were guilty of a conspiracy to violate the laws of the United States? Now if you have any reasonable doubts in your mind about that, you will find them both not guilty.

If, on the other hand, without drawing on your imagination too much or on conjecture or suspicion, you find that they were both guilty of the crime to violate the laws, you say so.

Now, having considered the conspiracy count, there are two more indictments, one against each defendant; one alleges that Quirk did certain unlawful acts in that he erected a still which was capable of, and intended for and designed for the unlawful production of distilled spirits and operated without a bond and so forth. Then you have the indictment against Goldstein in which he was alleged to have aided and abetted Quirk.

Those are both separate crimes. For the conspiracy, if you find that either one of these men is not connected with

the operation of this still actually as it was operated, then you will find them not guilty. If, on the other hand, you find either of them was connected and had helped to erect and [511] maintain that still, then you will find them guilty.

Now as to the credibility of witness, and this applies on both sides of the case, I think it can be best determined by using good common sense. You have seen the witnesses on the stand. You have heard their testimony. You have seen if there was a possible prejudice. In other words, you have been able to see them, to judge whether they are telling the truth or not.

Credibility can be determined many times by matching its consistency with some things that are well established facts. Now I think there is one well established fact, that this still was found on their property. Now the consistency of any person's testimony should be judged with relation to that established fact. I won't go into any further illustrations of it, but I think you can get the picture.

No agent has testified, no one has testified he saw either of these defendants operating a still or setting it up. If they had, that would be what we would call direct evidence. But the government has produced what they call a set of circumstances which points directly to the guilt of one or more defendants. I say to you that circumstantial evidence is just as good as direct evidence provided it appeals to you, it appeals to your sense of credibility and fairness and so forth, as establishing a fact.

Now this is purely a circumstantial case. I don't [512] mean by that that someone who may have tried to identify Goldstein did not do it. But even if Goldstein was identified by someone as having ordered this tank, then what is the next step from there, what inference can you draw from the fact he bought a tank and vats, that is not a crime. It is only a crime when you set it up to make alcohol.

So the government says something about lapse of memory. It is unfortunate that lapse of memory is not a substitute for evidence. This case, this indictment, was brought back in 1955. The events took place in 1954, I think, and we have to address ourselves to such positive facts as you find from the evidence that is produced here. Failure to produce evidence, if it can be had, is fatal to a case. Failure to produce evidence if it cannot be obtained is not fatal to a case.

I do not know what more I can do for you to instruct you on the law. I will receive suggestions from counsel as to errors or omissions. But before I do that, I will discharge Jurors No. 13 and No. 14 from further consideration of this case. I will see counsel now.

May I address myself to all the jurors? Our schedule for the summer is not very tough. If it interferes with any of your plans I will receive suggestions.

[Conference at the bench as follows:

Mr. Smith: The fact he is indicted is no [513] indication of guilt. I don't think you gave them the fact he failed to take the stand is no indication of guilt.

There was one thing you did say, if I got it right, I will take an objection to it, and that is the mere fact that Goldstein bought the tanks or ordered the tanks is not enough but that the government must prove he bought the tanks for the purpose of setting up a still.

Well, I don't think that would be a crime, I think they would have to show he bought the tanks as a result of an agreement with Quirk, that it shall be used in a still. He cannot conspire with himself, a thing apart, the intent would be important.

The Court: That would apply to the conspiracy count.

Mr. Smith: It would still have to show knowledge.

The Court: If he bought it for the purpose of setting up a still, he has knowledge.

Mr. Smith: In this place. He could have set up a still in Chicopee Falls.

Mr. Toltz: Where is that?

[514] The Court: You are getting ridiculous.

Mr. Smith: All right, I am primarily concerned about Nos. 27, 28, 29, 30, 31, 32.

The Court: Well, I will give them but you are going to be sorry.

Mr. Smith: I will not complain about that.

The Court: I will read them exactly as they are.

Mr. Toltz: Maybe I better look this over, he has it. I might say to you, "Cut it out." [Mr. Toltz consulting papers.]

Mr. Lewald: Will the Court instruct the jury about constructive control, constructive is sufficient under the statute.

Mr. Smith: Let's forget about the whole thing. If I have any rights I have them on my motion for judgment for acquittal.

Mr. Toltz: That is right, forget it all.]

The Court: I have been asked to state to the jury — I thought I had stated it — I probably did, inadvertently, that the mere fact that a defendant is indicted is no proof of any guilt. That is very well illustrated in the case of Gerald Quirk, I just ordered him acquitted.

[515] Now, as to the fact that a grand jury, a body of 23 men, two years ago issued an indictment against him, that makes no difference whatsoever. It doesn't help his reputation any but we are not concerned with reputation, we are concerned with "guilty" or "not guilty" here.

Now I also told you that the defendant Goldstein, as a matter of fact both defendants have a right to stand mute and say nothing, they cannot be compelled to take the stand

and testify, they have the right to rely on the government's case, its strength or weakness, and the fact that any defendant fails to take the stand, to avail himself of the right to testify is not to be considered as any admission of guilt or no inference should be drawn from it.

Now I will give the case to you. I think your lunch is ready.

If you care to have the valves in the jury room, you may take them with you as you go.

[The jury retired at 12:40 p.m. and reassembled in the court room at 3:25 p.m., finding the defendant Quirk guilty in Criminal 55-154 and the defendant Goldstein guilty on Criminal 55-155. The defendant Quirk was found guilty on Counts 1, 2, 3, and 4. On Criminal 55-157 the defendant Goldstein was found guilty on Counts 1, 2, and 3.]

[Adjourned.]

MOTION FOR JUDGMENT OF ACQUITTAL.

No. 55-154-S [U.S.C.A. No. 5289]

Now comes the defendant, Robert D. Quirk, and moves that a judgment of acquittal be entered for him on the above-captioned indictment.

By his Attorney,

(s) HARRY H. TOLTZ

7-1-57

SWEENEY, *Ch. J.*

Motion denied

By the Court

FJA

Dep. Clk.

MOTION FOR JUDGMENT OF ACQUITTAL.

No. 55-154-S [U.S.C.A. No. 5291]

Now comes the defendant, Samuel Goldstein, also known as Samuel Gold, and moves that a judgment of acquittal be entered for him in the above-captioned matter.

By his Attorney,

7-1-57 SWEENEY, *Ch. J.* (s) PAUL T. SMITH

Motion denied

By the Court

F.J.A.

Dep. Clk.

REQUESTS FOR INSTRUCTIONS TO JURY OF DEFENDANT, SAMUEL GOLDSTEIN.

No. 55-154-S; No. 55-157-S [U.S.C.A. Nos. 5291; 5292]

1. That the defendant Goldstein has been indicted by a grand jury is not even the slightest evidence of his guilt; and the fact that he has been indicted should not enter into any of your discussions or deliberations in any manner.

2. That some of the other defendants have been acquitted by direction of the Court should not be considered in determining the guilt or innocence of any of the other defendants; and the fact that some of the other defendants have been acquitted should not enter into any of your discussions or deliberations in any manner.

3. The failure of the defendant Goldstein to testify cannot create in any way any presumption against him and you must not permit such failure to weight in the slightest degree against him; nor should such failure enter into any of your discussions or deliberations in any manner.

4. The defendant Goldstein is presumed to be innocent and this presumption continues throughout the trial, and even during your deliberations and is overcome when, and only when, his guilt is established to your satisfaction beyond a reasonable doubt.

5. From the beginning of the trial until the end, the government has the burden of proving beyond a reasonable doubt every fact essential to the conviction of the defendant Goldstein.

6. The defendant Goldstein has no burden to sustain; if the evidence offered by any or all of the defendants, taken with the evidence offered by the government, raises a reasonable doubt as to the defendant's guilt, the defendant Goldstein must be acquitted.

7. Mere speculation, conjecture or surmise that any of the defendants is guilty of the offenses charged is insufficient to sustain the burden of proof resting on the government.

8. To find the defendant Goldstein guilty, you must be convinced of his guilt beyond a reasonable doubt, that is, you must be convinced of his guilt to a moral certainty.

9. If you are of the frame of mind where if the matter before you were a matter of the greatest importance in your respective lives away from the courtroom, and if you would pause and hesitate before acting, then there is a reasonable doubt, and the defendant Goldstein should be acquitted.

10. Unless you are satisfied beyond a reasonable doubt that the defendant Goldstein purchased the vats found on the premises in question, you must acquit him of all the offenses with which he is charged.

11. It is no crime to sell or deliver a vat.

12. The defendant Goldstein cannot be found guilty merely because he sold or delivered a vat which was put to unlawful use.

13. Even though you may be satisfied beyond a reasonable doubt that the defendant Goldstein purchased the vats in question, you still must acquit him of the offense of conspiracy unless you are also satisfied beyond a reasonable doubt that he furnished the vat, knowing that it

was to be used for an illicit purpose, and with the knowledge of the existence of the conspiracy.

14. In other words, you must not only be satisfied beyond a reasonable doubt that the defendant Goldstein furnished the vat in question, with knowledge that it was to be used for an illicit purpose, but also be satisfied beyond a reasonable doubt, that he in some sense promoted the illicit distillers' venture, made it his own, or had a stake in its outcome, before you can find him guilty of any conspiracy.

15. Moreover, should you acquit the defendants Robert D. Quirk and Gerald Quirk of the offense of conspiracy, you must acquit the defendant Goldstein of that offense.

16. Unless you find beyond a reasonable doubt that the defendant Robert D. Quirk set up a still or distilling apparatus set-up without registering the same as required by law, you must acquit the defendant Goldstein under count 1 of indictment No. 55-157-S.

17. The possession, control and operation of a distillery is a vital element of the offense of setting up and operating a still for the production of untaxed liquor and the person in possession and control is the offender.

18. You cannot find the defendant Robert D. Quirk guilty of setting up a still or distilling apparatus set-up not registered as required by law unless you also find beyond a reasonable doubt that the defendant Robert D. Quirk possessed, controlled and operated the distillery.

19. Unless you find beyond a reasonable doubt that the defendant Robert D. Quirk carried on the business of a distillery without the bond required by law, you must acquit the defendant Goldstein under count 2 of indictment No. 55-157-S.

20. You cannot find the defendant Robert D. Quirk guilty of carrying on the business of a distiller without

having given the bond required by law unless you also find that he actually operated the distillery.

21. Unless you find beyond a reasonable doubt that the defendant Robert D. Quirk manufactured mash fit for distillation and for the production of distilled spirits on premises other than an authorized distillery, you must acquit the defendant Goldstein under count 3 of indictment No. 55-157-S.

22. In any event, you cannot find the defendant Goldstein guilty of being an aider and abettor unless you find beyond a reasonable doubt that he, in some sort associated himself with the venture, participated in it as something that he wished to bring about or sought by his action to make it succeed.

23. You cannot convict the defendant Goldstein of the crime of aiding and abetting and setting up a still unless you find beyond a reasonable doubt that the defendant Goldstein was in possession and custody of a still already set up.

24. In order to convict the defendant Goldstein you must find beyond a reasonable doubt that the defendant Goldstein exercised or aided in the exercise of any control over the still.

25. In order to convict the defendant Goldstein of aiding and abetting the acts alleged in count 1 of indictment No. 55-157-S, you must find beyond a reasonable doubt that the defendant Goldstein acted in a capacity calculated to facilitate the custody or possession of a set-up still such as service as a caretaker, watchman, lookout, or in some other similar capacity.

26. The mere possibility or suspicion that goods lawful in themselves might be unlawful is not one to make one an aider or abettor and you must find beyond a reasonable doubt that Goldstein knew or had reason to know of the illicit intended use of the goods.

27. With respect to count 1 of indictment No. 55-157-S, in order to find Goldstein guilty, the jury must find beyond a reasonable doubt that Goldstein was a person in possession and control of the still.

28. In order to convict the defendant Goldstein under count 2 of indictment No. 55-157-S the jury must find beyond a reasonable doubt that Goldstein carried on the business of conducting an illicit still with Quirk and the Government must prove beyond a reasonable doubt that the defendant Goldstein actively helped in the carrying on of the business.

29. In order to convict under count 3 of indictment No. 55-157-S, the Government must prove beyond a reasonable doubt that Goldstein aided and abetted the actual making of mash and that Goldstein was in or around the place where the mash was made from ingredients stored there.

30. In order to convict under count 3 of indictment No. 55-157-S the Government must prove beyond a reasonable doubt that Goldstein specifically engaged in the conduct or business of making the mash.

31. In order to convict the defendant Goldstein under indictment No. 55-154-S, the Government must prove beyond a reasonable doubt that Goldstein entered into an agreement with Quirk or others named in the indictment and that the nature of the agreement was to engage in the alleged illegal act set forth in the indictment.

32. In order to convict the defendant Goldstein under indictment No. 55-154-S, the Government must prove beyond a reasonable doubt that Goldstein had knowledge of the conspiracy or that he had knowledge that Quirk was in conspiracy with others.

By his Attorney,

(s) PAUL T. SMITH

MOTION OF DEFENDANT, SAMUEL GOLDSTEIN FOR JUDGMENT OF ACQUITTAL OR NEW TRIAL

No. 55-154-S [U.S.C.A. No. 5291]

The jury having been discharged, the defendant Samuel Goldstein moves that a judgment of acquittal be entered for him and in the alternative, that he be granted a new trial, assigning as reasons for his motion for a new trial the following:

1. The Court erred in denying his motion for judgment of acquittal made at the conclusion of the evidence.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. The Court erred in charging the jury and in refusing to charge the jury as requested.

By his Attorney,

7-1-57 SWEENEY, *Ch. J.* (s) PAUL T. SMITH

Motion denied

By the Court

FJA

Dep. Clk.

JUDGMENT [as to Robert D. Quirk].

No. 55-154-S [U.S.C.A. No. 5289]

On this first day of July, 1957, came the attorney for the government and the defendant appeared in person and by counsel,

It is ADJUDGED that the defendant has been convicted upon his plea of not guilty and verdict of guilty of the offense of conspiracy to violate Alcoholic Tax Laws; in violation of 18 U.S.C. 371 as charged in Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

It is ADJUDGED that the defendant is guilty as charged and convicted

It is ADJUDGED that defendant be sentenced to be imprisoned for a period of two (2) years; execution of sentence suspended and defendant placed on probation for a period of three (3) years; probationary period to run concurrently with No. 55-155-S Criminal.

IT IS FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the Court for a violation of the court's orders.

IT IS FURTHER ORDERED that the clerk deliver two certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

(s) GEORGE C. SWEENEY
United States District Judge.
JOHN A. CANAVAN
Clerk.

JUDGMENT [as to Samuel Goldstein]
No. 55-154-S [U.S.C.A. No. 5291]

On this 1st day of July, 1957 came the Attorney for the government and the defendant appeared in person and by Counsel,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and verdict of guilty of the offense of conspiracy to violate Alcohol Tax Laws in violation of 18 U.S.C. 371 as charged in Indictment and the Court having asked the defendant whether he has anything to say why the judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of eight months (8), prison sentence to run concurrently with sentence imposed in No. 55-157-S Criminal.

It Is Adjudged that

It Is Ordered that the clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

(s) GEORGE C. SWEENEY
U. S. District Judge

The Court recommends commitment to:

JOHN A. CANAVAN
Clerk

A True Copy. Certified this 3rd day of July, 1957.

(by) HELEN I. TWEEDY
Deputy Clerk

(s) JOHN A. CANAVAN
Clerk

NOTICE OF APPEAL
OF DEFENDANT SAMUEL GOLDSTEIN.
No. 55-154-S [U.S.C.A. No. 5291]

Name and Address of Appellant: Samuel Goldstein
93 Park Street
Medford, Mass.

Name and Address of Appellant's Attorney: Paul T. Smith, Esquire
209 Washington Street
Boston 8, Mass.

Offense: 18 U.S.C. 371

Concise statement of judgment or order, giving date, and any sentence:	Verdict of guilty on June 19, 1957. Sentenced July 1, 1957 8 Months—$1,500. Fine.

I, Samuel Goldstein, hereby appeal to the United States Circuit Court of Appeals for the First Circuit from the above judgment.

Dated: July 1, 1957.

SAMUEL GOLDSTEIN
By: (s) PAUL T. SMITH
His Attorney

NOTICE OF APPEAL.

No. 55-154-S [U.S.C.A. No. 5289]

Name:	Robert D. Quirk
Address:	Mussman Road Sudbury, Mass.
Attorney:	
Name:	Harry H. Toltz
Address:	20 Pemberton Square Boston, Mass.
Offense:	18 U.S.C. 371
Concise Statement of Judgment, or Order Jury Date and Any Sentence:	Verdict—Guilty June 19, 1957 Sentence July 1, 1957 — Two Years Suspended and Probation for Three Years and $1,000 fine July 1, 1957

I, Robert D. Quirk, hereby appeal to the United States Circuit Court of Appeals for the First Circuit from the above Judgment.

Dated at Boston, Massachusetts this second day of July, 1957.

ROBERT D. QUIRK
By: (s) HARRY H. TOLTZ
His Attorney

Criminal Docket No. 55-155-S [U.S.C.A. No. 5290]
THE UNITED STATES
v.
ROBERT D. QUIRK

Violation: Violation of Alcohol Tax Laws; in violation of 26 U.S.C. 2810(a); 26 U.S.C. 2833; 26 U.S.C. 2834; 26 U.S.C. 2803(a) 4 counts

RELEVANT DOCKET ENTRIES.

1955

June 16 Indictment returned.

20 ALDRICH, *D. J.* Defendant arraigned and pleaded *not guilty.*

1957

June 11 SWEENEY, *Ch. J.* Defendant set to the bar to be tried with cases Nos. 55-154-S; 55-156-S; 55-157-S; 55-158-S; 55-159-S Crim. and Nos. 56-55-S and 56-56-S Crim. Jury trial begins, Jury empanelled; C. Frederick Coolidge, foreman; oral motion for view denied. Chacon's motion for separate trial denied; evidence; continued to June 12.

12 SWEENEY, *Ch. J.* Jury trial continues, evidence; cont'd to June 13.

1957

June 13 SWEENEY, *Ch. J.* Jury trial continues; jury returns verdict of not guilty by direction of the Court as to defts. Yarin and Bettencourt in Nos. 55-154-S; 55-158-S and 55-159-S. Crim. Deft. Chacon retracts plea of not guilty and pleads guilty on both indictments Nos. 56-55-S and 56-56-S Crim., Court suspends imposition of sentence and deft. placed on probation for a period of two years on each indictment, probationary periods to run concurrently; motion of deft. Robert D. Quirk for judgment of acquittal be entered for him on Counts I-II-III-IV filed and taken under advisement; cont'd to June 17.

17 SWEENEY, *Ch. J.* Jury trial continues with cases Nos. 55-154-S Crim., Robert D. Quirk, Gerald Quirk and Samuel Goldstein a/k/a Samuel Gold; (cont'd to June 19.) 55-155-S, 55-156-S and 55-157-S; continued to June 19.

19 SWEENEY, *Ch. J.* Jury trial continues with cases Nos. 55-154-S, 55-156-S, 55-157-S, Crim., Jury returns verdict of not guilty as to deft. Gerald Quirk in Nos. 55-154-S and 55-156-S Crim.; by direction of the Court at the conclusion of all evidence; Arguments; Charge; committed to Jury; Jury returns verdict of guilty on all counts as to defts. Robert Quirk and Samuel Goldstein a/k/a Samuel Gold.

July 1 SWEENEY, *Ch. J.* Deft. sentenced to be imprisoned for a period of two (2) years; execution of sentence suspended and deft. placed on probation for a period of three years; probationary period to run concurrently with that imposed in No. 55-154-S Crim. deft. is further ordered to pay a fine of $1000. and to stand committed until

1957

fine is paid; Court grants stay of execution pending appeal. Bail cont'd.

July 1 SWEENEY, *Ch. J.* Motion of deft. Robert D. Quirk for judgment of acquittal for him on Count I *denied.*

Motion of deft. Robert D. Quirk for judgment of acquittal for him on Count II *denied.*

Motion of deft. Robert D. Quirk for judgment of acquittal for him on Count III *denied.*

Motion of deft. Robert D. Quirk for judgment of acquittal for him on Count IV *denied.*

2 Notice of Appeal filed by the defendant Robert D. Quirk. Copy of the n/a/ sent to the U. S. Attorney.

INDICTMENT.

No. 55-155-S [U.S.C.A. No. 5290]

The grand jury charges:

Count 1.

ROBERT D. QUIRK

of Sudbury in the District of Massachusetts, on or about the twenty-third day of February, 1954, at Sudbury in said District, did have in his possession and custody and under his control a certain still or distilling apparatus set up which he failed to register with the Assistant Regional Commissioner, Alcohol and Tobacco Tax Division, Internal Revenue Service for the First District, which embraces and comprises the New England States and includes the Commonweath of Massachusetts, which still was then and there capable of and was intended and designed for the unlawful production of distilled spirits: in violation of 26 U.S.C. 2810(a).

Count 2.

ROBERT D. QUIRK

of Sudbury in the District of Massachusetts, on or about the twenty-third day of February, 1954, at Sudbury in said District, did carry on the business of a distiller without having given bond as required by law; in violation of 26 U.S.C. 2833.

Count 3.

ROBERT D. QUIRK

of Sudbury in the District of Massachusetts, on or about the twenty-third day of February, 1954, at Sudbury in said District, did manufacture mash fit for distillation and for the production of distilled spirits on premises other than a distillery duly authorized according to law; in violation of 26 U.S.C. 2834.

Count 4.

ROBERT D. QUIRK

of Sudbury in the District of Massachusetts, on or about the twenty-third day of February, 1954, at Sudbury in said District did possess certain distilled spirits, to wit, four hundred fifty (450) gallons, in ninety (90) five-gallon cans, the immediate containers of which did not have affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all Internal Revenue taxes imposed on such spirits; in violation of 26 U.S.C. 2803(a).

A True Bill.

(s) ALFRED A. JOHNSON
Foreman of the Grand Jury.

(s) WILLIAM J. KOEN
Assistant United States Attorney.

MOTION FOR JUDGMENT OF ACQUITTAL.

No. 55-155-S [U.S.C.A. No. 5290]

Now comes the defendant, Robert D. Quirk, and moves that a judgment of acquittal be entered for him on Count One of the above-captioned indictment.

By his Attorney,
(s) HARRY H. TOLTZ

7-1-57
SWEENEY, *Ch. J.*
Motion denied.
By the Court
FJA
Dep. Clk.

MOTION FOR JUDGMENT OF ACQUITTAL.

No. 55-155-S [U.S.C.A. No. 5290]

Now comes the defendant, Robert D. Quirk, and moves that a judgment of acquittal be entered for him on Count Two of the above-captioned indictment.

By his Attorney,
(s) HARRY H. TOLTZ

7-1-57
SWEENEY, *Ch. J.*
Motion denied.
By the Court
FJA
Dep. Clk.

MOTION FOR JUDGMENT OF ACQUITTAL.
No. 55-155-S [U.S.C.A. No. 5290]

Now comes the defendant, Robert D. Quirk, and moves that a judgment of acquittal be entered for him on Count Three of the above-captioned indictment.

By his Attorney,
(s) HARRY H. TOLTZ

7-1-57
SWEENEY, *Ch. J.*
Motion denied.
By the Court
FJA
Dep. Clk.

MOTION FOR JUDGMENT OF ACQUITTAL.
No. 55-155-S [U.S.C.A. No. 5290]

Now comes the defendant, Robert D. Quirk, and moves that a judgment of acquittal be entered for him on Count Four of the above-captioned indictment.

By his Attorney,
(s) HARRY H. TOLTZ

7-1-57
SWEENEY, *Ch. J.*
Motion denied.
By the Court
FJA
Dep. Clk.

JUDGMENT [as to Robert D. Quirk].
No. 55-155-S [U.S.C.A. No. 5290]

On this first day of July, 1957, came the attorney for the government and the defendant appeared in person and by counsel,

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and verdict of guilty of the offense of violation of Alcoholic Tax Laws; in violation of 26 U.S.C. 2810(a); 26 U.S.C. 2833; 26 U.S.C. 2834; 26

U.S.C. 2803(a) as charged in indictment—4 counts and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that defendant be sentenced to be imprisoned for a period of two (2) years; execution of sentence suspended and defendant placed on probation for a period of three (3) years; probationary period to run concurrently with No. 55-154-S Criminal;

IT IS FURTHER ORDERED that defendant pay a fine of $1000. and to stand committed until fine is paid.

IT IS FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for violation of the court's orders.

IT IS FURTHER ORDERED that the clerk deliver two certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

(s) GEORGE C. SWEENEY
United States District Judge.
JOHN A. CANAVAN
Clerk.

NOTICE OF APPEAL.

No. 55-155-S [U.S.C.A. No. 5290]

Name:	Robert D. Quirk
Address:	Mussman Road Sudbury, Mass.
Attorney:	
Name:	Harry H. Toltz
Address:	20 Pemberton Square Boston, Mass.
Offense:	26 U.S.C. 2810 (a) 26 U.S.C. 2833 26 U.S.C. 2834 26 U.S.C. 2803 (a)
Concise Statement of Judgment or Order Jury Date and Any Sentence	Verdict—Guilty June 19, 1957 Sentence—Two Years Suspended and Probation for Three Years and $1,000 fine July 1, 1957

I, Robert D. Quirk, hereby appeal to the United States Circuit Court of Appeals for the First Circuit from the above Judgment.

Dated at Boston, Massachusetts this second day of July, 1957.

ROBERT D. QUIRK

By: (s) HARRY H. TOLTZ

His Attorney

Criminal Docket No. 55-157-S [U.S.C.A. No. 5292]

THE UNITED STATES

v.

SAMUEL GOLDSTEIN, a/k/a
SAMUEL GOLD

Violation: Aiding and abetting in violation of Alcohol Tax Laws; in violation of 18 U.S.C. 2-3 Counts.

RELEVANT DOCKET ENTRIES.

1955

June 16 Information [sic] returned.

20 ALDRICH, *D. J.* Defendant arraigned and pleaded *not guilty;* . . .

1957

June 11 SWEENEY, *Ch. J.* Defendant set to the bar to be tried with cases Nos. 55-154-S; 55-155-S; 55-156-S; 55-158-S; 55-159-S and 56-55-S; and 56-56-S Crim.; Jury trial begins. Jury impanelled; C. Frederick Coolidge, Foreman; Evidence; Oral Motion for View, Denied; Defendant Chacon's Motion for Separate Trial, Denied; Cont'd to June 12, 1957.

12 SWEENEY, *Ch. J.* Trial continues; evidence; cont'd to June 13th.

13 SWEENEY, *Ch. J.* Trial continues; evidence; jury returns verdict of not guilty by direction of the Court as to defendants Yarin and Bettencourt in No. 55-154-S; 55-158-S; and 55-159-S Crim. Deft. Chacon retracts plea of not guilty and pleads guilty on both indictments Nos. 56-55 and 56-56-S Crim. Imposition of sentence suspended and defendant placed on probation for a period of two years on each indictment, probationary periods to run concurrently; (Cont'd to June 17)

1957

Three Motions for Judgment of Acquittal for defendant filed and taken under advisement.

June 17 SWEENEY, *Ch. J.* Trial continues in cases Nos. 55-154-S, Crim. Robert D. Quirk, Gerald Quirk and Samuel Goldstein, a/k/a Samuel Gold, No. 55-155-S Robert D. Quirk, No. 55-156-S; Gerald Quirk and 55-157-S Crim. Samuel Goldstein, a/k/a Samuel Gold; (Cont'd to June 19); evidence, cont'd to June 19.

19 SWEENEY, *Ch. J.* Trial continues in cases Nos. 55-154-S, 55-155-S and 55-157-S Crim.; evidence; Jury returns verdict of *not guilty as to defendant Gerald Quirk* on No. 55-154- and 55-156-S; Crim. by direction of the Court at the conclusion of all evidence; requests for instructions to jury by defendant Samuel Goldstein; argument; charge; jury returns verdict of *guilty on all counts as to the defendants Robert Quirk and Samuel Goldstein, a/k/a Samuel Gold.*

24 Motion of Defendant; Samuel Goldstein for Judgment of Acquittal or new trial filed.

July 1 SWEENEY, *Ch. J.* Motion of defendant Samuel Goldstein for judgment of acquittal or new trial, denied.

1 SWEENEY, *Ch. J.* Defendants sentenced to be imprisoned for a period of eight (8) months; prison sentence to run concurrently with that imposed in No. 55-154-S Crim.; defendant is FURTHER ORDERED to pay a fine of $1500 and to stand committed until fine is paid; Court grants stay of execution pending appeal. Bail continued.

1 SWEENEY, *Ch. J.* Motion of Defendant, Samuel Goldstein for judgment of acquittal for him on Count III denied; also denied as to Count II.

1957

July 1 SWEENEY, *Ch. J.* Motion of Defendant, Samuel Goldstein, for judgment of acquittal for him on Count I denied.

2 Notice of Appeal filed by the defendant, Samuel Goldstein. Copy of the n/a sent to the U. S. Attorney.

INDICTMENT.

No. 55-157-S [U.S.C.A. No. 5292]

The grand jury charges:

Count 1.

SAMUEL GOLDSTEIN, also known as SAMUEL GOLD, of Medford in the District of Massachusetts, on or about the first day of September, 1953, at Sudbury in said District, did aid and abet one Robert D. Quirk, in the setting up of a certain still or distilling apparatus set up at Sudbury in said District, which said still was not registered as required by law, and was then and there capable of and was intended and designed for the unlawful production of distilled spirits; in violation of 18 U.S.C. 2.

Count 2.

SAMUEL GOLDSTEIN, also known as SAMUEL GOLD, of Medford in the District of Massachusetts, on or about the first day of September, 1953, at Sudbury in said District, did aid and abet one Robert D. Quirk in carrying on the business of a distiller at Sudbury in said District, without having given bond as required by law; in violation of 18 U.S.C. 2.

Count 3.

SAMUEL GOLDSTEIN, also known as SAMUEL GOLD, of Medford in the District of Massachusetts, on or about the first day of September, 1953, at Sudbury in said District, did aid and abet one Robert D. Quirk in manufacturing mash fit for distillation and for the production

of distilled spirits at Sudbury in said District, on premises other than a distillery duly authorized according to law; in violation of 18 U.S.C. 2.

A True Bill,

(s) ALFRED A. JOHNSON
Foreman of the Grand Jury

(s) WILLIAM J. KOEN
Assistant United States Attorney

MOTION FOR JUDGMENT OF ACQUITTAL.

No. 55-157-S [U.S.C.A. No. 5292]

Now comes the defendant, Samuel Goldstein, also known as Samuel Gold, and moves that a Judgment of Acquittal be entered for him on Count One of the above-captioned indictment.

By his Attorney,

(s) PAUL T. SMITH

7-1-57 SWEENEY, *Ch. J.*
Motion Denied
By the Court
F.J.A.
Dep. Clk.

MOTION FOR JUDGMENT OF ACQUITTAL.

No. 55-157-S [U.S.C.A. No. 5292]

Now comes the defendant, Samuel Goldstein, also known as Samuel Gold, and moves that a judgment of acquittal be entered for him on Count Two of the above-captioned indictment.

By his Attorney,

(s) PAUL T. SMITH

7-1-57 SWEENEY, *Ch. J.*
Motion Denied
By the Court
F.J.A.
Dep. Clk.

MOTION FOR JUDGMENT OF ACQUITTAL.

No. 55-157-S [U.S.C.A. No. 5292]

Now comes the defendant, Samuel Goldstein, also known as Samuel Gold, and moves that a Judgment of Acquittal be entered for him on Count Three of the above-captioned indictment.

By his Attorney,

(s) PAUL T. SMITH

7-1-57 SWEENEY, *Ch. J.*
Motion Denied
By the Court
F.J.A.
Dep. Clk.

MOTION OF DEFENDANT, SAMUEL GOLDSTEIN FOR JUDGMENT OF ACQUITTAL OR NEW TRIAL.

No. 55-157-S [U.S.C.A. No. 5292]

The jury having been discharged, the defendant Samuel Goldstein moves that a judgment of acquittal be entered for him under each count, and in the alternative, that he be granted a new trial under each count, assigning as reasons for his motion for a new trial the following:

1. The Court erred in denying his motion for judgment of acquittal made at the conclusion of the evidence.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. The Court erred in charging the jury and in refusing to charge the jury as requested.

By his Attorney:

(s) PAUL T. SMITH

7-1-57 SWEENEY, *Ch. J.*
Motion Denied
By the Court
F.J.A.
Dep. Clk.

JUDGMENT [as to Samuel Goldstein]
No. 55-157-S [U.S.C.A. No. 5292]

On this 1st day of July, 1957 came the Attorney for the government and the defendant appeared in person and by Counsel,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and verdict of guilty of the offense of aiding and abetting in violation of the Alcohol Tax Laws, in violation of 18 U.S.C. 2—as charged in Indictment—3 counts—and the court having asked the defendant whether he has anything to say why the judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of eight (8) months, prison sentence to run concurrently with sentence imposed in No. 55-154-S Criminal;

It Is Further Ordered that defendant pay a fine of $1500. and to stand committed until fine is paid; Court grants state of execution pending appeal.

It Is Adjudged that

It Is Ordered that the clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

(s) George C. Sweeney
U. S. District Judge

The Court recommends commitment to:

John A. Canavan
Clerk

NOTICE OF APPEAL.

No. 55-157-S [U.S.C.A. No. 5292]

Name and Address of Appellant:	Samuel Goldstein 93 Park Street Medford, Mass.
Name and Address of Appellant's Attorney:	Paul T. Smith, Esquire 209 Washington Street Boston 8, Mass.
Offense:	18 U.S.C. 2
Concise statement of judgement or order, giving date, and any sentence:	Verdict of guilty on June 19, 1957. Sentenced July 1, 1957 8 months—$1,500.00 Fine.

I, Samuel Goldstein, hereby appeal to the United States Circuit Court of Appeals for the First Circuit from the above judgment.

Dated: July 1, 1957.

SAMUEL GOLDSTEIN
By: (s) PAUL T. SMITH
His Attorney

Office - Supreme Court, U.S.
FILED
JAN 30 1958
JOHN T. FEY, Clerk

In the
Supreme Court of the United States

OCTOBER TERM, 1957

No. 755

SAMUEL GOLDSTEIN,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent;

SAME *v.* SAME;

ROBERT D. QUIRK,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent;

SAME *v.* SAME.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PAUL T. SMITH
209 Washington Street
Boston 8, Massachusetts
Attorney for Petitioners

Of Counsel
MANUEL KATZ
ALBERT F. WOOD
For Petitioner Samuel Goldstein
HARRY H. TOLTZ
For Petitioner Robert D. Quirk

Blanchard Printing Company, Boston, Mass. — Law Printers

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In the
Supreme Court of the United States

OCTOBER TERM, 1957

No.

SAMUEL GOLDSTEIN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent;

SAME *v.* SAME;

ROBERT D. QUIRK,
Petitioner.

v.

UNITED STATES OF AMERICA,
Respondent;

SAME *v.* SAME.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The petitioners Samuel Goldstein and Robert D. Quirk, by their respective attorneys, severally pray that a writ of certiorari issue to review the judgments entered in these cases on December 26, 1957, by the Court of Appeals for the First Circuit.

Opinion Below

The opinion of the Court of Appeals is set out in Appendix A, page 24. It is as yet unreported.

Jurisdiction

The judgments of the Court of Appeals were entered on December 26, 1957. The petitioners severally filed petitions for rehearing on January 9, 1958. The petitions were denied on the same day. The jurisdiction of this Court is invoked under 28 U.S.C. s. 1254(1).

Questions Presented

A. *In the cases against petitioner Goldstein:*

I. Whether from direct evidence that petitioner Goldstein had ordered the manufacture of a number of tanks, pursuant to blueprints furnished by him, paid for his purchases in cash and borrowed the manufacturer's truck to remove the tanks, combined with direct evidence that several months later those tanks were found to be part of an illegal still on petitioner Quirk's farm, a jury could properly have found him guilty of conspiring with petitioner Quirk in violation of 18 U.S.C. s. 371 to commit certain offenses defined in the Internal Revenue laws and of aiding and abetting petitioner Quirk in violation of

18 U.S.C. s. 2 to possess the still, to carry on the business of a distiller, and to manufacture mash.

II. The manufacturer of the tanks, purchased by petitioner Goldstein, having been called as a witness by the Government and having testified in direct examination that petitioner Goldstein had told him that the tanks were going to be used in a laundry somewhere in South Boston, whether petitioner Goldstein had any burden to substantiate the existence of that laundry, either by his own testimony or by other evidence.

III. Assuming that the evidence warranted the conclusion that petitioner Goldstein had knowingly and intentionally furnished petitioner Quirk with the tanks which were subsequently incorporated in the still and that petitioner Quirk possessed the still, carried on the business of a distiller, and manufactured mash, whether a jury could properly have found petitioner Goldstein guilty of aiding and abetting petitioner Quirk in violation of 18 U.S.C. s. 2 to possess the still, to carry on the business of a distiller, and to make mash.

IV. In the event that it is determined that petitioner Quirk was improperly convicted of possessing a still, of carrying on the business of a distiller, and of manufacturing mash, whether petitioner Goldstein's conviction for aiding and abetting petitioner Quirk in the commission of those narrowly defined offenses should be reversed.

B. *In the cases against petitioner Quirk:*

V. In the event that it is determined that petitioner Goldstein was improperly convicted of conspiring with petitioner Quirk to commit certain offenses defined in the

Internal Revenue laws, whether a jury could properly have found petitioner Quirk alone guilty of that conspiracy.

VI. Whether from evidence that toward the end of 1953 petitioner Quirk had purchased two 275-gallon tanks and other assorted appliances similar in kind to what were found in a still assembly on a farm owned in part and operated by him and that petitioner Quirk knew or should have known of the operation of that still on his farm, a jury could properly have found him guilty of having possessed the still, of carrying on the business of a distiller, of manufacturing mash, and of having possessed distilled spirits.

Statutes Involved

18 U.S.C. s. 2 (1952):

> Principals.
>
> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. s. 371 (1952):

> Conspiracy to commit offense or to defraud United States.
>
> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any man-

ner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Int. Rev. Code of 1939, s. 2803, 53 Stat. 303, as amended, 54 Stat 512, 26 U.S.C. s. 2803 (1952):

Stamps for containers of distilled spirits.

(a) REQUIREMENT. No person shall transport, possess, buy, sell, or transfer any distilled spirits, unless the immediate container thereof has affixed thereto a stamp denoting the quantity of distilled spirits contained therein and evidencing payment of all internal-revenue taxes imposed on such spirits. The provisions of this section shall not apply to—

(1) Distilled spirits placed in a container for immediate consumption on the premises or for preparation for such consumption;

(2) Distilled spirits in bond or in customs custody;

(3) Distilled spirits in immediate containers required to be stamped under existing law;

(4) Distilled spirits in actual process of rectification, blending, or bottling, or in actual use in processes of manufacture;

(5) Distilled spirits on which no internal-revenue tax is required to be paid;

(6) Distilled spirits not intended for sale or for use in the manufacture or production of any article intended for sale; or

(7) Any regularly established common carrier receiving, transporting, delivering, or holding for transportation or delivery distilled spirits in the ordinary course of its business as a common carrier.

(b) PURCHASE AND SUPPLY. Any person placing or intending to place any distilled spirits upon which all internal-revenue taxes have been paid into any container upon which a stamp is required by this section, or withdrawing or intending to withdraw any imported spirits in such containers from customs custody, shall be entitled to purchase sufficient stamps for stamping such containers. Such stamps shall be issued by the Commissioner to each Collector, upon his requisition, in such numbers as may be necessary in his district, and shall be sold by the Collectors to persons entitled thereto upon application therefor and compliance with regulations under this section, at a price of 1 cent for each stamp, except that in the case of stamps for containers of less than one half pint the prices shall be one quarter of 1 cent for each stamp. When in his judgment there is no danger to the revenue, and upon the giving of such bonds or other security as he may deem necessary, the Commissioner may authorize the sale of such stamps to importers for stamping containers in the country from which imported.

(c) UNUSED STAMPS: EXCHANGE, REFUND, ETC. The Commissioner of Internal Revenue, under regulations prescribed by him and approved by the Secretary of the Treasury, may redeem or make allowance for any unused stamps issued under section 203 of the Liquor Taxing Act of 1934 or subsection (b) of this section by exchanging them for other stamps of the same kind or by refunding moneys received therefor: *Provided*, That stamps may be exchanged or the value thereof refunded only in quantities of the value of $5 or more:

And provided further, That no claim for the exchange of strip stamps or refund therefor shall be allowed unless presented within two years after the date on which such stamps were lawfully issued. There are hereby authorized to be appropriated annually, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out this provision.

(d) REGULATIONS FOR ISSUING, AFFIXING, AND CANCELING STAMPS. The Commissioner, with the approval of the Secretary, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and destroying stamps required by this section, the form and denominations of such stamps, proof that applicants are entitled to such stamps, and the method of accounting for receipts from the sale of such stamps, and (b) such other regulations as he shall deem necessary for the enforcement of this section.

(e) DESTRUCTION OF STAMPS. Every person emptying any container stamped under the provisions of this section shall at the time of emptying such container destroy the stamp thereon.

(f) FORFEITURE OF SPIRITS. All distilled spirits found in any container required to bear a stamp by this section, which container is not stamped in compliance with this section and regulations issued thereunder, shall be forfeited to the United States.

(g) PENALTIES. Any person who violates any provision of this section, or who, with intent to defraud, falsely makes, forges, alters, or counterfeits any stamp made or used under this section, or who uses, sells, or has in his possession any such forged, altered, or counterfeited stamp, or any plate or die used or which may be used in the manufacture thereof, or any stamp

required to be destroyed by this section, or who makes, uses, sells, or has in his possession any paper in imitation of the paper used in the manufacture of any such stamp, or who reuses any stamp required to be destroyed by this section, or who places any distilled spirits in any bottle which has been filled and stamped under this section without destroying the stamp previously affixed to such bottle, or who affixes any stamp issued under this section to any container of distilled spirits on which any tax due is unpaid, or who makes any false statement in any application for stamps under this section, or who has in his possession any such stamps obtained by him otherwise than as provided in subsection (b), shall on conviction be punished by a fine not exceeding $1,000, or by imprisonment at hard labor not exceeding five years, or by both. Any officer authorized to enforce any provisions of law relating to internal revenue stamps is authorized to enforce the provisions of this section and the provisions of section 2909 relating to the bottling of distilled spirits in bond.

(h) TRANSFER OF DUTIES.

For transfer of duties and powers of the Commissioner and his agents, see section 3170.

Int. Rev. Code of 1939, s. 2810(a), 53 Stat. 308, as amended, 54 Stat. 715, 26 U.S.C. s. 2810(a) (1952):

Registry of stills.

(a) REQUIREMENT. Every person having in his possession or custody, or under his control, any still or distilling apparatus set up, shall register the same with the collector of the district in which it is, by subscribing and filing with him duplicate statements, in

writing, setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its cubic contents, the owner thereof, his place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used; one of which statements shall be retained and preserved by the collector, and the other transmitted by him to the Commissioner. Stills and distilling apparatus shall be registered immediately upon their being set up.

Every still or distilling apparatus not so registered, together with all personal property in the possession or custody, or under the control of such person, and found in the building, or in any yard or inclosure connected with the building in which the same may be set up, shall be forfeited.

And every person having in his possession or custody, or under his control, any still or distilling apparatus set up which is not so registered, shall pay a penalty of $500, and shall be fined not less than $100, nor more than $1,000, and imprisoned for not less than one month, nor more than two years.

Stills and distilling apparatus set up at refineries for the refining of crude petroleum or the production of petroleum products and not used in the manufacture of distilled spirits are not required to be registered under this section.

Int. Rev. Code of 1939, s. 2833(a), 53 Stat. 319, 26 U.S.C. s. 2833(a) (1952):

Distilling without giving bond.

(a) PENALTY AND FORFEITURE. Any person who shall carry on the business of a distiller without having

given bond as required by law, or who shall engage in or carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for every such offense, be fined not less than $100 nor more than $5,000 and imprisoned for not less than thirty days nor more than two years. And all distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or in any building, room, yard, or inclosure connected therewith, and used with or constituting a part of the premises, and all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated, and all right, title, and interest therein of every person, who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or inclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery, which shall be found in any such building, yard, or inclosure, and all the right, title, and interest of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States.

Int. Rev. Code of 1939, s. 2834, 53 Stat. 319, 26 U.S.C. s. 2834 (1952):

Mash, wort, and vinegar; vinegar factories.

No mash, wort, or wash, fit for distillation or for the production of spirits or alcohol, shall be made or fermented in any building or on any premises other than a distillery duly authorized according to law; and no mash, wort, or wash so made and fermented shall be sold or removed from any distillery before being distilled; and no person, other than an authorized distiller, shall, by distillation, or by any other process, separate the alcoholic spirits from any fermented mash, wort, or wash; and no person shall use spirits or alcohol in manufacturing vinegar or any other article, or in any process of manufacture whatever, unless the spirits or alcohol so used shall have been produced in an authorized distillery and (except in the case of vinegar) the tax thereon paid. Every person who violates any provision of this section shall be fined for each offense not less than $500 nor more than $5,000, and be imprisoned not less than six months nor more than two years. Nothing in this section shall be construed to apply to fermented liquors, or to fermented liquids used for the manufacture of vinegar exclusively. But no worm, goose-neck, pipe, conductor, or contrivance of any description whatsoever whereby vapor might in any manner be conveyed away and converted into distilled spirits, shall be used or employed or be fastened to or connected with any vaporizing apparatus used for the manufacture of vinegar; nor shall any worm be permitted on or near the premises where such vaporizing process is carried on.

Nor shall any vinegar factory, for the manufacture of vinegar as aforesaid, be permitted, except as provided in section 2835, within six hundred feet of any distillery or rectifying house. But it shall be lawful

for manufacturers of vinegar to separate, by a vaporizing process, the alcoholic property from the mash produced by them, and condense the same by introducing it into the water or other liquid used in making vinegar.

No person, however, shall remove, or cause to be removed from any vinegar factory or place where vinegar is made, any vinegar or other fluid or material containing a greater proportion than 2 per centum of proof spirits. Any violation of this provision shall incur a forfeiture of the vinegar, fluid, or material containing such proof spirits, and shall subject the person or persons guilty of removing the same to the punishment provided for any violation of this section.

And sections 2827, 2828, and 2830 shall apply to all premises whereon vinegar is manufactured, to all manufacturers of vinegar and their workmen or other persons employed by them.

Statement of the Case

Petitioners Robert D. Quirk and Samuel Goldstein and three other named persons were indicted for conspiring, in violation of 18 U.S.C. s. 371, to commit various offenses defined in the Internal Revenue laws in connection with the operation of a still. Petitioner Quirk was also charged in an indictment containing four counts with having had possession and custody of a still in violation of 26 U.S.C. s. 2810(a), with having carried on the business of distiller without having given the required bond in violation of 26 U.S.C. s. 2833(a), with having manufactured mash fit for distillation and for the production of distilled spirits in violation of 26 U.S.C. s. 2834, and with having possessed distilled spirits in violation of 26 U.S.C. s. 2803(a). Petitioner Goldstein was also charged in a three-count indict-

ment with having aided and abetted petitioner Quirk, in violation of 18 U.S.C. s. 2, to possess the still, to carry on the business of a distiller, and to make mash. In the course of the trial, the other three persons named in the conspiracy indictment were acquitted by directon of the court.

There was testimony to show the following: In September, 1953, petitioner Goldstein ordered from a manufacturer of tanks in Boston the fabrication of twelve tanks pursuant to blueprints furnished by Goldstein. The manufacturer who was a government witness testified that the petitioner Goldstein told him that the tanks were going to be used in a laundry in South Boston.[1] Petitioner Goldstein paid for his purchases in cash and borrowed a truck from the manufacturer in order to remove the tanks. On February 19, 1954, and again on February 20, 1954, investigators of the Alcohol and Tobacco Tax Division of the Internal Revenue Service detected the odor of mash emanating from a farm on Mossman Road in Sudbury, Massachusetts, owned by petitioner Quirk and his mother. On one of those days the investigators observed three unidentified men enter the suspected barn from a near-by cow barn. The buildings on the farm which was operated by petitioner Quirk consisted of a residence occupied by petitioner Quirk's parents, several barns including the suspected barn and the near-by cow barn, and petitioner Quirk's home which was about three hundred feet away from the suspected barn.[2] On February 23, 1954, the investigators, armed with a search warrant, broke into

[1] There was no evidence that the tanks could not be used in a laundry or for a normal business purpose; nor was there evidence that by the very nature of their construction their use was restricted to an illicit purpose.

[2] Although the court below described petitioner Quirk's home as being "well within smelling distance (of the barn in which the still was found) in respect to the odor of mash", there was no such evidence.

the suspected barn and discovered therein a fully assembled still, which remained hot though the electricity had been turned off. The assembly included among other things, the tanks which the petitioner Goldstein had purchased in September of 1953 and also two 275-gallon tanks and other assorted appliances similar in kind to what the petitioner Quirk had purchased some time toward the end of 1953. Some of the tanks contained alcohol and several others contained mash. Also found were several 5-gallon cans, some containing alcohol and others empty, sixty 100-pound bags of sugar, 280 pounds of dry yeast, a bag of lump ammonia, and five pails of booster material. Electricity was supplied by an underground cable and the cost of the current was charged to petitioner Quirk. Water for the still assembly was supplied by an artificial pond in the rear of the building. No one was present when the investigators broke into the barn. Petitioner Quirk and his brother had left the farm shortly before the raid took place. Upon his return, the investigators arrested him. At the time he denied knowledge of any of the illegal activities being conducted in the barn. At the trial petitioner Quirk denied that he knew petitioner Goldstein. Petitioner Quirk "testified that he had rented the barn on January 18, 1954, to an unprosperous-looking character, whom he called 'Joe Fuci,' for the storage of machinery; that Joe paid in cash an advance of $25.00 for the first month's rental; that he had never seen or heard of Joe before, and never saw him since; that he had no curiosity at all as to why Joe should want to store machinery at the Quirk farm nor as to what type of machinery it was; that he never thereafter saw any smoke coming from the barn nor detected the smell of any odors; that he never saw anybody going to or coming from the barn after the alleged rental agreement; that it never struck him as curious that when February 18, 1954, came around, Joe Fuci did not present

himself to pay the second month's rent." Petitioner Goldstein neither testified nor offered evidence in his behalf. There was no direct testimony to connect petitioner Goldstein with petitioner Quirk.

At the close of the evidence, each of the petitioners moved for a judgment of acquittal in each case. The motions were taken under advisement. Each of the petitioners was found guilty by the jury under each indictment in which he was named. Petitioner Goldstein moved for judgments of acquittal or for a new trial. The petitioners' motions for judgment of acquittal, filed at the conclusion of the evidence, and petitioner Goldstein's motions for judgment of acquittal or a new trial, filed after the verdicts of the jury, were denied. Petitioner Goldstein was sentenced in the conspiracy case to be imprisoned for eight months; the sentence to run concurrently with the sentence in the accessory case. In the accessory case he was sentenced to be imprisoned for eight months and to pay a fine of $1,500.; the prison sentence to run concurrently with that imposed in the conspiracy case. Petitioner Quirk was sentenced to be imprisoned in the conspiracy case for a period of two years; execution of sentence was suspended and he was placed on probation for a period of three years. He received a similar sentence in the case involving the substantive offenses and in addition was ordered to pay a fine of $1000. The probationary periods in both cases were to run concurrently. The sentences were stayed pending review.

Both petitioners appealed to the Court of Appeals for the First Circuit which on December 26, 1957, affirmed the judgments of the District Court. Petitions for rehearing filed on January 9, 1958, were denied that same day. The Court of Appeals stayed its mandates pending review in this Court.

Argument

A. *In the cases against petitioner Goldstein:*

I. After conceding that the case against petitioner Goldstein was perhaps weaker than the case against petitioner Quirk, the court below not only proceeded to mis-state petitioner Goldstein's position, ignore the principles emphasized in *Direct Sales Co.* v. *United States*, 319 U.S. 703, and ground its decision on "pure assumption"; but also approved the broadening of "the already pervasive and wide-sweeping nets of conspiracy prosecutions," contrary to the expressed policy of this Court. *Grunewald* v. *United States*, 353 U.S. 391, 404.

As indicated by the mere statement of this issue, there was no direct evidence that petitioner Goldstein had sold or supplied the tanks to petitioner Quirk or anyone connected with the still either as a seller acting independently of the illicit distiller or as his agent, innocent or otherwise, or as his confederate. There was no direct evidence that he had any contact with petitioner Quirk or anyone else. As a matter of fact, petitioner Quirk denied knowing him. There was no direct evidence that he had knowledge of the conspiracy or of the illicit venture. There was no direct evidence that petitioner Goldstein joined both mind and hand with petitioner Quirk or anyone else to make the accomplishment of the unlawful enterprise possible. There was no direct evidence that petitioner Goldstein had ever been near the still.

The only direct evidence implicating petitioner Goldstein tended to prove that he had purchased some tanks, manufactured according to blueprints furnished by him, and that four or five months later those tanks were found to be part of an illicit still.

First of all, it is questionable, to say the least, because

of the lapse of four or five months, that such evidence gives rise to a proper inference that those tanks went directly, instead of circuitously, to the illicit distiller. Cf. *Van Gorder* v. *United States*, 8 Cir., 21 F.2d 939; *Gargotta* v. *United States*, 8 Cir., 77 F.2d 977. If the evidence does not admit of that inference, it would seem that even the Government would concede that its conspiracy and accessory cases against petitioner Goldstein must collapse. *United States* v. *Peoni*, 2 Cir., 100 F.2d 401.

Secondly, even conceding that such an inference were permitted, other inferences founded on that inference would still have to be drawn; and on the authority of *United States* v. *Ross*, 92 U.S. 281, and on the principles emphasized in *Direct Sales*, the Government's cases against petitioner Goldstein must nevertheless fall. For the jury would still have to infer from the inference, that the tanks went directly to the illicit distillery, that petitioner Goldstein knew of the contemplated illegal venture, a finding which only could be made upon "clear, not equivocal," evidence; and then, after piling on that inference, pile on another inference, that he intended by supplying the tanks "to further, promote and cooperate" in the illegal undertaking. Neither the charge of conspiracy nor the charge of aiding and abetting can "be made out by piling inference upon inference". *Direct Sales Co.* v. *United States*, 319 U.S. 703; cf. *United States* v. *Ross*, 92 U.S. 281, 283, 284.

In short, the evidence was neither of such a character as imported an agreement or concert of action between petitioner Goldstein and petitioner Quirk, a prerequisite for conviction under the conspiracy indictment; nor sufficient to warrant petitioner Goldstein's conviction as an aider and abettor.

That the Court of Appeals erroneously construed the explicit teachings of *Direct Sales* is made clear by its

advancing by implication the purported absence of even a scintilla of evidence of a sale to petitioner Quirk or to anyone else as a reason for the inappositeness of *Direct Sales*. That the court below grounded its decision on pure conjecture and surmise seems equally apparent. For the very absence of direct evidence upon which it based its statement, that "the record contains not a scintilla of evidence indicating that any . . . sale was made to Quirk or to anybody else," is made the foundation for upholding the jury's conclusion that "the equipment was . . . acquired by Goldstein for the very purpose of its being subsequently incorporated in the still . . . by prearrangement with" Quirk. Such a conclusion requires, in the words of the Chief Justice of this Court, "a process of retroactive rationalization;"[3] and is in conflict with the decisions of other courts of appeals.

Compare, for example, *Jehl* v. *United States*, 9 Cir., 127 F.2d 585, where convictions for conspiracy and aiding and abetting were set aside; and *Reid* v. *United States*, 7 Cir., 44 F.2d 51; *Neely* v. *United States*, 5 Cir., 145 F.2d 828; *Butler* v. *United States*, 10 Cir., 197 F.2d 561; *Newman* v. *United States*, 5 Cir., 220 F.2d 289; and *United States* v. *Allard*, 3 Cir., 240 F.2d 840, where convictions were upheld because the evidence was ample and unequivocal that the defendant knew his co-conspirator or principal, knew of the illicit purpose of the enterprise, and intended to participate in accomplishing its objective.

In *United States* v. *Allard*, supra, the Court, although affirming the appellant's conviction, expressly stated that evidence, that appellant under a fictitious name had made a cash purchase of an oil burner larger than the type usually installed in homes, and that subsequently the oil burner was found at the site of the still, *did not by itself*

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[3] *Watkins* v. *United States*, 354 U.S. 178, 204

justify his conviction for conspiracy to distill liquor illegally.

Moreover, the use of a conspiracy indictment here illustrates once again "the growing habit to indict for conspiracy in lieu of prosecuting for the substantive offense itself, or in addition thereto," despite the protest of this and other courts. See Jackson, J., concurring in *Krulewitch* v. *United States*, 336 U.S. 440, 445, 446; *Grunewald* v. *United States*, 353 U.S. 391, 404.

II. The Court of Appeals' emphasis of the petitioner Goldstein's failure to testify and offer evidence "tending to substantiate the existence of the alleged laundry in South Boston" demonstrates that its decision was influenced by an erroneous concept of law so inconsistent with the accepted and usual course of practice in the field of federal criminal law as to call for an exercise of this Court's power of supervision.

At the trial, the jury was neither asked by the prosecuting attorney nor permitted by the trial judge to draw adverse inferences from the failure of petitioner Goldstein to testify or offer "evidence tending to substantiate the existence of the alleged laundry in South Boston."[4] Any comment on, or the permitting of any adverse inference from, his neglect to testify would have been, if objected to by petitioner Goldstein, reversible error. *Wilson* v. *United States*, 149 U.S. 60; *Bruno* v. *United States*, 308 U.S. 297. Any comment on, or the permitting of any adverse inference from, the failure of petitioner Goldstein to call witnesses "to substantiate the existence of the alleged laundry in South Boston" would also have been error:

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[4] As a matter of fact, the trial judge correctly charged the jury that no inference could be drawn from any defendants failure to take the stand (Consolidated Record Appendix to Petitioners' Briefs in the court below, pages 306 and 307).

first, because there had been no indication that it was within his power to call others than himself[5] or that there were any others to call; and second, because the evidence against him was not so strong that, if innocent, he would be expected to call them. See *Graves* v. *United States*, 150 U.S. 118, and particularly the quotation of what was said by Chief Justice Shaw in the case of *Com.* v. *Webster*, 5 Cush. 295, 316; *Ford* v. *United States*, 5 Cir., 210 F.2d 313, 317; *Samish* v. *United States*, 9 Cir., 223 F.2d 358, 365; *United States* v. *D'Ercole*, 2 Cir., 225 F.2d 611, 614; *Kampmeyer* v. *United States*, 8 Cir., 227 F.2d 313, 323, 324; *McClanahan* v. *United States*, 5 Cir., 230 F.2d 919, 925, 926. Furthermore, evidence that petitioner Goldstein purchased the tanks for a laundry, if believed, would have helped rather than hurt him. Cf. *United States* v. *Peoni*, 2 Cir., 100 F.2d 401.

The Court of Appeals, by stressing what could not properly have been mentioned to the jury, indicates an erroneous concept of an important principle in the field of criminal law. That concept should be corrected. Uncorrected, it imputes a sinister meaning to petitioner Goldstein's right not to testify which should be condemned, cf. *Slochower* v. *Board of Higher Ed. of the City of N. Y.*, 350 U.S. 551, 557; and more important to petitioner Goldstein, denotes that in determining the sufficiency of the evidence against him—evidence which even the court below described as weak—it considered petitioner Goldstein's failure to testify and call others.

III. From all that appears, the Court of Appeals did not consider *Bozza* v. *United States*, 330 U.S. 160, wherein it was said at page 163 that "the Internal Revenue statutes

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[5] The tanks were purchased by petitioner Goldstein in September, 1953, (Consolidated Record Appendix to Petitioners' Briefs in the court below, pages 52, 53). The trial took place in June, 1957.

have broken down the various steps and phases of a continuous illicit distilling business and made each of them a separate offense," requiring the proof for any one offense "to point directly to conduct within the narrow margins which the statute alone defines."

Even if it could be assumed, arguendo, that petitioner Goldstein provided the tanks for the illicit distillery, his activity ended with the sale or supplying of those tanks. Cf. *Young* v. *United States*, 5 Cir., 48 F.2d 26; *United States* v. *Peoni*, 2 Cir., 100 F.2d 401. His convictions as an aider and abettor were, according to *Bozza* v. *United States*, supra, improper since there was no evidence that he ever aided in the exercise of any control over the distillery or served as a caretaker, watchman, lookout, or in any similar capacity; or ever aided in operating the still or in manufacturing the alcohol; or ever helped to make mash, or took any part in or aided or abetted this particular part of the unlawful process in any manner.

IV. Admittedly, the evidence implicating petitioner Quirk probably would have been sufficient to sustain his conviction as a conspirator, *Turinetti* v. *United States*, 8 Cir., 2 F.2d 15; *Reid* v. *United States*, 7 Cir., 44 F.2d 51, if there had been any evidence of an agreement or concert of action with someone else;[6] and also probably would have warranted his conviction as an aider and abettor, *Reid* v. *United States*, supra; *Boyett* v. *United States*, 5

[6] Although there was evidence that on one occasion just before the raid, three unidentified men entered the suspected barn from the near-by cow barn, the trial judge recognized that such evidence was not sufficient to warrant the jury's finding a concert of action between petitioner Quirk and anyone else. He charged the jury, "Now since there are only two defendants (petitioners Goldstein and Quirk) left, you cannot find one of them guilty of conspiracy and the other not guilty, because to conspire you have to have somebody to conspire with, . . ." (Consolidated Record Appendix to Petitioners' Briefs in the court below, page 303).

Cir., 48 F.2d 482, if there had been any evidence of the existence of a principal and if he had been so charged. But *Bozza* v. *United States*, 330 U.S. 160, casts doubt on the sufficiency of the evidence for the purpose of convicting petitioner Quirk as a principal. And if his conviction as a principal is untenable, petitioner Goldstein's conviction as his accessory should be reversed.

B. *In the cases against petitioner Quirk:*

V. Should petitioner Goldstein's conviction for conspiracy be set aside, as has been urged, petitioner Quirk's conviction alone on the conspiracy indictment cannot be sustained, even though the indictment did charge that the named defendants conspired with others unknown to the grand jury, since there was no evidence that others, known or unknown, were members of the conspiracy.[7] *Pomerantz* v. *United States*, 3 Cir., 51 F.2d 911, 913; *Worthington* v. *United States*, 7 Cir., 64 F.2d 936, 939; *Thompson* v. *United States*, 5 Cir., 227 F.2d 671, 673; *United States* v. *Gordon*, 3 Cir., 242 F.2d 122, 125; cf. *Rogers* v. *United States*, 340 U.S. 367. 375.

VI. As pointed out under Part IV, the evidence probably would have been sufficient to sustain petitioner Quirk's conviction as a conspirator if there had been any evidence of an agreement or concert of action with someone else;

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[7] Although there was evidence that on one occasion just before the raid, three unidentified men entered the suspected barn from the near-by cow barn, the trial judge recognized that such evidence was not sufficient to warrant the jury's finding a concert of action between petitioner Quirk and anyone else. He charged the jury, "Now since there are only two defendants (petitioners Goldstein and Quirk) left, you cannot find one of them guilty of conspiracy and the other not guilty, because to conspire you have to have somebody to conspire with, . . ." (Consolidated Record Appendix to Petitioners' Briefs in the court below, page 303).

and also probably would have warranted his conviction as an aider and abettor if there had been any evidence of the existence of a principal and if he had been so charged. But there was no such evidence or charge. Moreover, there was no evidence that petitioner Quirk had exercised control over the completed still assembly; or operated the still or manufactured the alcohol; or made mash; or possessed distilled spirits. At most, the evidence indicated that he had purchased two 75-gallon tanks and other assorted appliances similar in kind to what were found in the still assembly on the farm owned in part and operated by him and that he knew or should have known of the operation of the still on that farm. As a result, it would seem that petitioner Quirk's conviction for possession of a still, for carrying on the business of a distiller, for manufacturing mash, and for having possessed distilled spirits should be set aside. *Bozza* v. *United States*, 330 U.S. 160.

Conclusion

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,
PAUL T. SMITH
209 Washington Street
Boston 8, Massachusetts
Attorney for petitioners

Of Counsel
MANUEL KATZ
ALBERT F. WOOD
For petitioner SAMUEL GOLDSTEIN
HARRY H. TOLTZ
For petitioner ROBERT D. QUIRK

Appendix A.

United States Court of Appeals
For the First Circuit

Nos. 5289, 5290.

ROBERT D. QUIRK,

DEFENDANT, APPELLANT,

v.

UNITED STATES OF AMERICA,

APPELLEE;

Nos. 5291, 5292.

SAMUEL GOLDSTEIN,

DEFENDANT, APPELLANT,

v.

UNITED STATES OF AMERICA,

APPELLEE.

CONSOLIDATED APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS.

Before MAGRUDER, *Chief Judge*, and WOODBURY and HARTIGAN, *Circuit Judges*.

Harry H. Toltz for Robert D. Quirk, appellant.

Manuel Katz, with whom *Paul T. Smith* and *Albert F. Wood* were on brief, for Samuel Goldstein, appellant.

George H. Lewald, Assistant U. S. Attorney, with whom *Anthony Julian*, United States Attorney, was on brief, for appellee.

OPINION OF THE COURT.

December 26, 1957.

PER CURIAM. These are appeals from judgments of conviction in criminal cases, in which the only question pre-

sented is whether the district court committed reversible error in denying motions by the defendants for judgments of acquittal.

One could perhaps wish that the government agents who raided the illegal still had expended a little more time and patience to "button up" the cases against the various defendants, instead of putting the government to the necessity of relying on the jury to convict on the basis of logical inferences from circumstantial evidence. Nevertheless, we think the cases were strong enough to warrant their submission to the jury, and that the judgments of conviction must stand.

Appellants Robert D. Quirk and Samuel Goldstein were convicted under indictments charging that they violated 18 U.S.C. § 371 by conspiring, with three other named persons, to commit various offenses defined in the federal liquor laws. In the course of the trial, the indictments against the other three persons were dismissed by order of the district court for lack of evidence.

Appellant Quirk was also convicted under an indictment charging, in four counts, the commission of various substantive liquor offenses, and appellant Goldstein was convicted under an indictment charging him with having aided and abetted Quirk in their commission.

There is no doubt that somebody was operating an illegal still at the Quirk farm in Sudbury, Massachusetts. This farm, though jointly owned by defendant-appellant Quirk and his mother, was actually run by the defendant. On the farm were a residence occupied by Quirk's parents, a residence occupied by Quirk, and several barns. Defendant Quirk's home was about 700 feet away from the barn in which the illegal distillery was being conducted, well within smelling distance in respect to the odor of mash, though Quirk insisted that he was completely unaware of what was going on in the barn.

Investigators of the Alcohol and Tobacco Tax Division, Internal Revenue Service, having detected the odor of mash, and three men, unidentified, having been observed to enter the suspected barn from the near-by cow barn, broke into the building on February 23, 1954, armed with a search warrant, the validity of which is not questioned. A padlock had to be forced, and no one was found in the building at the time.

However, the investigators did discover in the building a fully assembled still, which remained hot, though the electricity had been turned off. The assembly included a boiler, powered by an oil burner, two 275-gallon tanks, a 9 x 5 ft. horizontal still pot or cooker, a copper column extending from the cellar to the attic of the building equipped with water pressure tanks and pumps, condensers, a rectangular tank containing alcohol, and several other rectangular tanks containing "mash". Also found were several 5-gallon cans, some containing alcohol and others empty, sixty 100-lb. bags of sugar, 280 pounds of dry yeast, a bag of lump ammonia, and five pails of booster material. Electricity was supplied by an underground cable, and the cost of the current was charged to defendant Quirk. Water for the still assembly was supplied by an artificial pond in the rear of the building.

According to the testimony of defendant Quirk, he and his brother had left the Quirk farm shortly before the raid took place; when they returned he found the investigators at the barn and made his identity known to the agents. Though he stoutly denied knowledge of any of the illegal activities being conducted in the barn, defendant Quirk was arrested at that time.

Quirk further testified that he had rented the barn on January 18, 1954, to an unprosperous-looking character whom he called "Joe Fuci," for the storage of machinery; that Joe paid in cash an advance of $25.00 for the first

month's rental; that he had never seen or heard of Joe before, and never saw him since; that he had no curiosity at all as to why Joe should want to store machinery at the Quirk farm nor as to what type of machinery it was; that he never thereafter saw any smoke coming from the barn nor detected the smell of any odors; that he never saw anybody going to or coming from the barn after the alleged rental agreement; that it never struck him as curious that when February 18, 1954, came around, Joe Fuci did not present himself to pay the second month's rent. Joe Fuci was not produced as a witness, nor was any evidence offered to substantiate the story of the lease to him. Quirk's testimony concerning his activities during the period in question was seriously contradicted by various disinterested witnesses.

It was in evidence that sometime toward the end of 1953 Quirk had purchased two 275-gallon tanks and other assorted appliances similar in kind to what were found in the still assembly.

On this evidence the members of the jury were not naive enough to find Quirk innocent of the offenses charged in the indictments.

The case against Goldstein was perhaps weaker. There was no direct testimony to connect Goldstein with defendant Robert Quirk, who in fact denied ever having seen Goldstein before. The evidence was that the still pot or cooker and the rectangular tanks which were found as parts of the still assembly were articles which had been manufactured at Goldstein's order by the Wharf Forging & Welding Company. The official of this company who negotiated with Goldstein testified that Goldstein told him that the tanks were going to be used in a laundry somewhere in South Boston. Goldstein himself did not testify, nor did he offer any evidence tending to substantiate the existence of the alleged laundry in South Boston. Upon completion of the

equipment pursuant to blueprints furnished by Goldstein, the latter paid for his purchases in cash and borrowed the company's truck to remove the tanks, which were later specifically traced to the still assembly at the Quirk farm.

Goldstein's argument is based upon the pure assumption that he might have sold the tanks to Quirk sometime between the date of their purchase and the raid at the Quirk farm a few months later; and he argues that mere knowledge of an illegal purpose on the part of the buyer is not sufficient to convict the seller of engaging in a conspiracy with the buyer. Of course, this is not necessarily so, as is made clear in *Direct Sales Co.* v. *United States*, 319 U.S. 703 (1943). Besides that, the record contains not a scintilla of evidence indicating that any such sale was made to Quirk, or to anybody else. The jury were warranted in concluding that the equipment procured by Goldstein, and later found in the still assembly, was designed for the use to which it was put, and was acquired by Goldstein for the very purpose of its being subsequently incorporated in the still at the Quirk farm, by prearrangement with appellant Robert Quirk.

Judgments will be entered affirming the judgments of the District Court.

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In the Supreme Court of the United States

October Term, 1957

SAMUEL GOLDMAN and ROBERT D. QUIRK,

Petitioners,

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

ROBERT D. McILWAIN,
Special Assistant to the Attorney General,

ROBERT KRIM,
Attorney,

Department of Justice,
Washington 25, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 755

SAMUEL GOLDSTEIN and ROBERT D. QUIRK,
PETITIONERS

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 24-28; R. 335-339) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 26, 1957 (R. 339-340). Petitions for rehearing were denied on January 9, 1958 (R. 349). The petition for a writ of certiorari was filed on January 30, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether there was sufficient evidence to warrant submission of the question of petitioners' guilt to the jury.

STATEMENT

Petitioners were found guilty under two separate indictments charging them with a conspiracy [1] to violate federal internal revenue laws relating to alcohol and with substantive violations of those laws (R. 4-7, 307, 319-320, 327-328). Petitioner Goldstein was sentenced to concurrent terms of imprisonment of eight months under each indictment and a fine of $1500 under the substantive indictment (R. 314-315, 330). Petitioner Quirk was sentenced to terms of imprisonment of two years under each indictment, with execution of the sentences suspended during concurrent probationary periods of three years. Under the substantive indictment, he was also fined $1,000 (R. 313-314, 322-323). On appeal, the Court of Appeals affirmed the judgments of conviction (R. 339-340).

The following evidence was adduced at the trial:

In September 1953, petitioner Goldstein ordered the manufacture of a boiler tank specially designed according to his specification. It was of the type used in the distillation of alcohol, known as a "still pot" or "cooker." Later, he ordered the manufacture of several rectangular tanks or vats. He paid cash for

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[1] Charges as to three others named in the conspiracy indictment were dismissed by the trial judge for insufficient evidence.

them and accepted delivery at the manufacturing plant. At the time, he told the manufacturing company that the tank was to be used in a laundry somewhere in South Boston (R. 52-65, 109-110). These items were subsequently found to be an integral part of an illegal distillery located in a barn on a farm owned by petitioner Quirk and his mother (R. 33-37).

The distillery was discovered by investigators of the Alcohol and Tobacco Tax Division, Internal Revenue Service, after they had detected an odor of mash emanating from the Quirk farm on February 19 and 20, 1954. At that time the investigators saw three men coming out of the barn, but they could not recognize them (R. 32-33). As a result, on February 23, 1954, the investigators, armed with a search warrant, went to the farm. Unable to locate anyone there, they forced an entry into the building from which the odor of mash emanated. There they discovered a complete still set up for the distillation of alcohol. This included a boiler powered by an oil burner, two 275 gallon oil tanks, a still pot or cooker, a copper column extending from the cellar to the attic of the building, water pressure tanks, a pump, condensers, a rectangular tank containing alcohol and several other rectangular tanks containing mash. The distilling apparatus had been turned off but it was still hot. Mash was running out of the pipes and back to the floor and out of the rear of the building. The inspectors also found five-gallon cans, some of which contained alcohol and some of which were empty, 100-pound bags of sugar, dry yeast and ammonia

(R. 10-12, 15-16, 22-23, 24-26, 33-34, 36, 66, 68, 73-74, 182-185, 191, 193, 196). Electricity into the barn was supplied by an underground cable which ran to the house occupied by Quirk's parents (R. 213). The electricity was charged to and paid for by Quirk. From December 1953, the use of electricity on the Quirk farm had increased appreciably (R. 104).

Quirk was arrested about an hour later when he returned to the farm (R. 34, 45-46). He refused to answer any questions except to deny that he had anything to do with the distillery. He said that he was unaware of the existence of the distillery despite the fact that his home was only a few hundred feet away from the barn where it was located (R. 230).

Quirk testified that he rented the barn on January 18, 1954 to one Joe Fuci for the storage of machinery, and that Fuci paid him $25 in advance for the first month's rental. He said that this was the only time he ever saw Fuci and that the rent was not paid the following month. He added that he did not know why Fuci wanted to store machinery in his building or what type of machinery it was. He said he did not see any smoke coming from the barn, nor detect any odors from that source (R. 210, 227-228, 254-256, 276, 277, 280). He denied knowing Goldstein (R. 279).

Petitioner Quirk actually ran the farm. Evidence was introduced showing that, in the fall of 1953, he had purchased electrical, plumbing and building equipment of the type which was found in the building where the distillery was located. These materials

could also have been used in building Quirk's home (R. 81-83, 84-88, 91-103, 209, 214, 228, 232).

Motions for judgments of acquittal were unsuccessfully filed in both cases (R. 307, 308, 313).

ARGUMENT

Petitioners' contention that the evidence does not support the verdict is bottomed on the fact that there was no direct proof of the relationship between the two petitioners. Since there was undoubtedly ample evidence to justify an inference that Quirk was implicated in operating an illegal distillery, the question is really limited to the sufficiency of the evidence to establish Goldstein's participation in a conspiracy with Quirk, and his consequent liability for the substantive offenses committed in furtherance thereof. *Pinkerton* v. *United States*, 328 U.S. 640.

It is settled, of course, that no formal agreement is essential to the formation of a conspiracy; a mutual implied understanding is sufficient. The agreement is generally a matter of inference deduced from acts, conduct, and attendant circumstances. *Glasser* v. *United States*, 315 U.S. 60; *United States* v. *Manton*, 107 F. 2d 834, 839 (C.A. 2), certiorari denied, 309 U.S. 664; *Telman* v. *United States*, 67 F. 2d 716, 717 (C.A. 10), certiorari denied, 292 U. S. 650. It is clear, too, that personal acquaintance of conspirators with each other is not necessary; it suffices if there is mutual understanding and cooperation in furthering the purposes of the unlawful enterprise. *Martin* v. *United States*, 100 F. 2d 490, 495-496 (C.A. 10), certiorari denied, 306 U. S. 649; *Jezewski* v. *United*

States, 13 F. 2d 599, 602 (C.A. 6), certiorari denied, 273 U. S. 735; *Allen* v. *United States*, 4 F. 2d 688, 691 (C.A. 7), certiorari denied, *sub nom. Mullen* v. *United States*, 267 U. S. 598.

Applying these principles here, the Court of Appeals properly found the evidence sufficient to warrant the jury in finding a conspiracy between the two petitioners. The evidence showed not only that Goldstein purchased the tank and vats, but that the equipment he purchased was specially designed; that he paid for it in cash and himself carted it away from the manufacturing plant; and that it turned up later as part of the distillery on Quirk's farm, for which Quirk had also purchased parts. The evidence also showed that Goldstein tried to conceal his purpose in buying the still. The jury had the right to infer that the relationship of these events was not fortuitous. No one fact would have been enough for a conviction, but together they presented a jury question. See *Direct Sales Company* v. *United States*, 319 U. S. 703; *United States* v. *Allard*, 240 F. 2d 840 (C.A. 3). And the verdict of the jury "must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it." *Glasser* v. *United States*, 315 U. S. 60, 80. The sufficiency of the evidence in this case, sustained by two courts below, presents no issue calling for review by this Court. *United States* v. *Johnson*, 319 U. S. 503, 518.

The trial court instructed the jury not to draw any adverse inference from petitioner Goldstein's failure to testify (R. 306-307). And the Court of Appeals did not, as petitioners claim (Pet. 19-20), draw such

an inference. The Court of Appeals merely noted that fact in its summary of the evidence.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

RUFUS D. MCLEAN,
Acting Assistant Attorney General.

BEATRICE ROSENBERG,
FELICIA DUBROVSKY,
Attorneys.

FEBRUARY 1958.